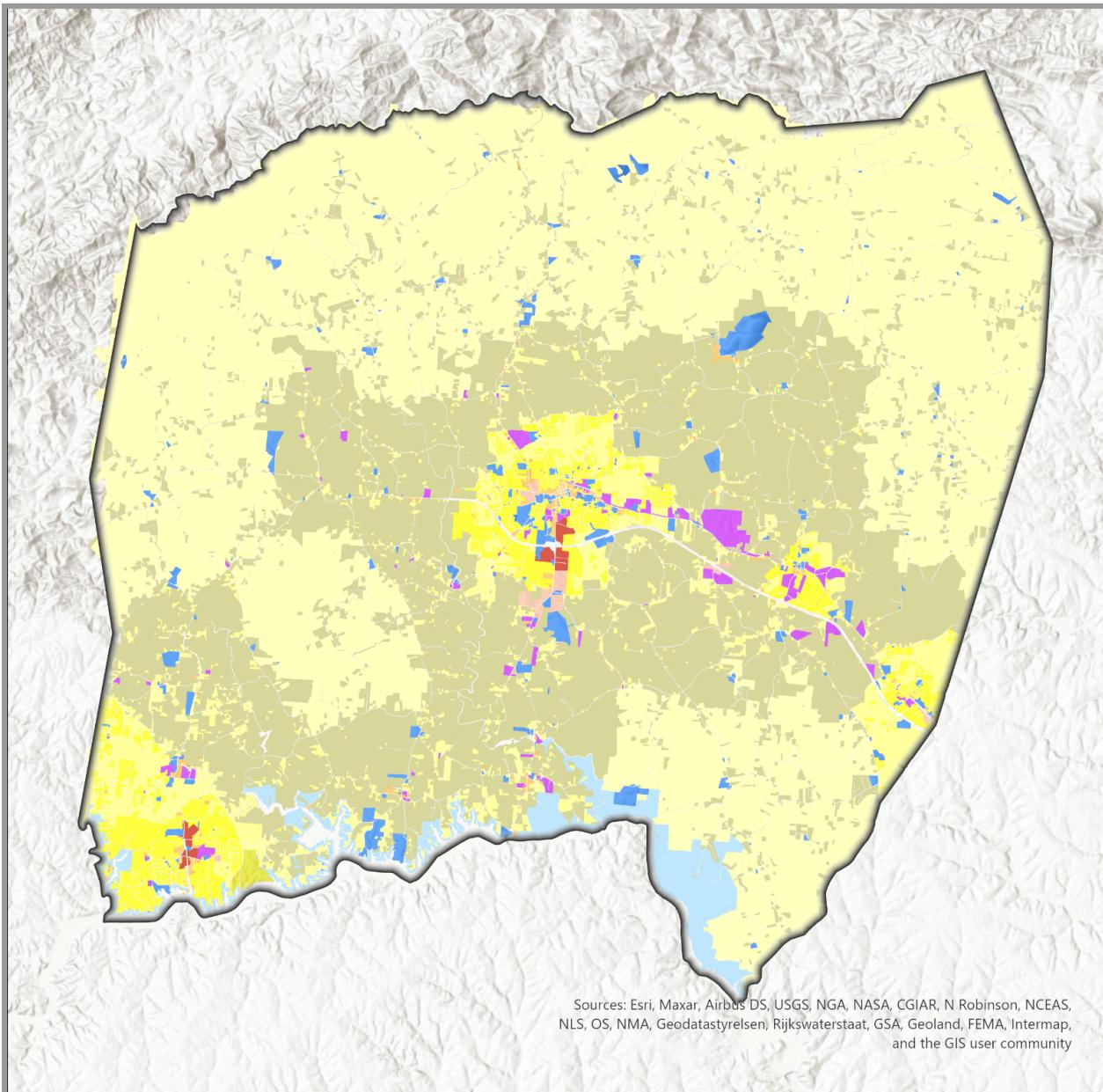


ALEXANDER COUNTY PLANNING BOARD HANDBOOK 2026



Sources: Esri, Maxar, Airbus DS, USGS, NGA, NASA, CGIAR, N Robinson, NCEAS, NLS, OS, NMA, Geodatastyrelsen, Rijkswaterstaat, GSA, Geoland, FEMA, Intermap, and the GIS user community

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PART 1: INTRODUCTION

Welcome to the Alexander County Planning Board

Welcome to the Alexander County Planning Board. As a Planning Board member, you play an important role in shaping the physical, economic, and environmental landscape of Alexander County.

As a member of the Planning Board, you are also a member of the **Alexander County Zoning Board of Adjustment**, the **Alexander County Flood Damage Prevention Board**, and the **Alexander County Water Quality Board**.

As a member of all of these organizations, you have important duties such as:

- Reviewing **rezoning** and **text amendment** requests and making recommendations to the Board of Commissioners;
- Acting as the Board of Adjustment to consider **variances**, **special use permits**, and appeals of staff decisions in **quasi-judicial hearings**;
- Participating in updates to the **Comprehensive Plan** and ensuring that zoning decisions are consistent with adopted land use policy;

This handbook is designed to help members of the Alexander County Planning Board with the knowledge, procedures, and context necessary to effectively perform their duties. It serves as both an orientation tool for new members and a reference for ongoing service, addressing key processes, roles, and responsibilities as established by local ordinance, the North Carolina General Statutes (particularly Chapter 160D), and the Alexander County Land Development Code (LDC).

This handbook is compiled primarily from information found in:

- **Land Use Law in North Carolina** by David W. Owens
- **Introduction to Zoning and Development Regulations** by David W. Owens
- **Quasi-Judicial Handbook** by David W. Owens and Adam Lovelady
- Selected entries from the **Coates Canon Law Blog**
- The Alexander County Land Development Code

Personnel Information

Planning Staff

- Planning Director - **Patrick Creech**
 - pcreech@alexandercountync.gov
 - (828) 352-7747
- Planner - **Amy Bucknum**
 - abucknum@alexandercountync.gov
 - (828) 352-7748
- Code Enforcement - **Victor Breininger**
 - vbreininger@alexandercountync.gov
 - (828) 352-7746
- Historic Preservation Staff Liaison - **Connie Kincaid**
 - ckincaid@alexandercountync.gov
 - (828) 352-7757

Attorneys Representing the Board

- Ben Faulkenberry - Alexander County
 - bfaulkenberry@@alexandercountync.gov
 - (828) 352-7695
- Monroe Pannell - Town of Taylorsville
 - monroe@conoverlaw.net
 - (828) 464-0700

Planning Board Officers

- 2026 Planning Board Officers:
 - Chairman - **Coy Reese**
 - Vice Chairman - **Matt Schrum**
 - Secretary - **Joey Price**
 - Clerk - **Amy Bucknum**

PART 2: ALEXANDER COUNTY FOUNDATIONS OF LAND USE REGULATIONS

The Aspects of Planning Board Membership

In Alexander County, the Planning Board is authorized by local ordinance to serve in multiple distinct capacities. While some jurisdictions assign these responsibilities to separate boards, Alexander County consolidates them within a single body. This approach requires members to understand and apply different processes depending on the context of the meeting or hearing.

Each of these roles is governed by different procedures and standards under Chapter 160D of the North Carolina General Statutes and the Alexander County Land Development Code (LDC). It is essential for board members to recognize which role they are operating in for each agenda item and to follow the appropriate decision-making process.

The Alexander County Planning Board	<p>As the Planning Board, members act primarily in an advisory and legislative capacity. The board reviews <u>rezoning requests</u>, <u>zoning text amendments</u>, <u>comprehensive plan updates</u>, and makes formal recommendations to the Board of Commissioners.</p> <p>These decisions are legislative in nature, meaning they are policy-focused and do not require sworn testimony or evidence. The board may consider a broad range of information, including public opinion and general planning principles.</p> <p><i>All members</i> participate in hearings of the Planning Board.</p>
The Alexander County Zoning Board of Adjustment	<p>In its capacity as the Zoning Board of Adjustment, the Planning Board acts in a quasi-judicial role. This includes hearing applications for <u>variances</u>, <u>special use permits</u>, and <u>appeals of administrative decisions</u>.</p> <p>These hearings resemble court proceedings: witnesses must be sworn in, evidence must be competent and substantial, and decisions must be based solely on the facts presented during the hearing.</p> <p>The Planning Board selects (5) members to serve as the Board of Adjustment at each hearing.</p>
The Alexander County Flood Damage Prevention Board	<p>When sitting as the Flood Damage Prevention Board, members hear appeals and variance requests related to floodplain development regulations. This is also a quasi-judicial function requiring sworn testimony and findings of fact</p> <p>The members of the Zoning Board of Adjustment serve as the members of the Flood Damage Prevention Board.</p>
The Alexander County Water Quality Board	<p>In this role, the board addresses appeals or variances related to water quality buffer regulations, including matters arising under the county's Water Supply Watershed Protection Ordinance. This is also a quasi-judicial function requiring sworn testimony and findings of fact.</p> <p>The members of the Zoning Board of Adjustment serve as the members of the Flood Damage Prevention Board.</p>

Understanding the Land Use Approval Process in Alexander County

Land use decisions in Alexander County involve multiple levels of review, recommendation, and approval. Besides the Planning Board/Zoning Board of Adjustment, levels in the land use approval process include:

Planning Staff

The Planning and Development Department is a designated administrative body within the County government of Alexander County. Additionally, the government and the Town of Taylorsville have entered into a contract for the county to provide planning and land use services for the Town.

Within the Planning Department, there are two zoning administrators and one code compliance officer. All land use applications begin with the Planning staff, and they serve as the first point of contact for zoning questions, permit applications, subdivisions, and commercial and residential development.

Technical Review Committee (TRC)

The Technical Review Committee (TRC) is a staff-level body composed of representatives from multiple departments and partner agencies, such as fire marshal, public utilities, EMS, and environmental health. Representatives from the Department of Transportation also participate, as well as from the City of Hickory when projects involve water or sewer in the Bethlehem area. Additional departments or groups (the Tax Office, Economic Development, the County School System) are invited to participate depending on the project.

The TRC is authorized to approve commercial site plans and subdivisions between 11 and 34 lots. They also play an advisory role in text amendments and map amendments.

TRC comments are documented and shared with both staff and the applicant, and may form the basis of staff recommendations to the Planning Board or Zoning Board of Adjustment.

Historic Preservation Commission

The Alexander County Historic Preservation Commission is a separate quasi-judicial body tasked with reviewing applications for Certificates of Appropriateness for designated historic districts and landmarks. They determine whether proposed changes to historic properties are in sync with the character of the district, hold public hearings, and issue findings of fact based on their decisions.

The Alexander County Board of Commissioners

The Board of County Commissioners is the final authority on legislative land use matters in the county, including:

- Zoning map and text amendments (rezonings);
- Adoption and amendment of the Comprehensive Plan;
- Approval or denial of development agreements or conditional zoning requests.

The Board of Commissioners are empowered to select the members of the Planning Board and Zoning Board of Adjustment and determine their jurisdiction and powers.

The Board of Commissioners enact the overarching guide for land use decisions in the county by passing the county's Comprehensive Plan. Under Chapter 160D, rezoning decisions must include a statement of consistency with the Comprehensive Plan (G.S. §160D-605). County Commissioners may approve, modify, or deny proposals based on the public interest, planning goals, and staff and Planning Board input.

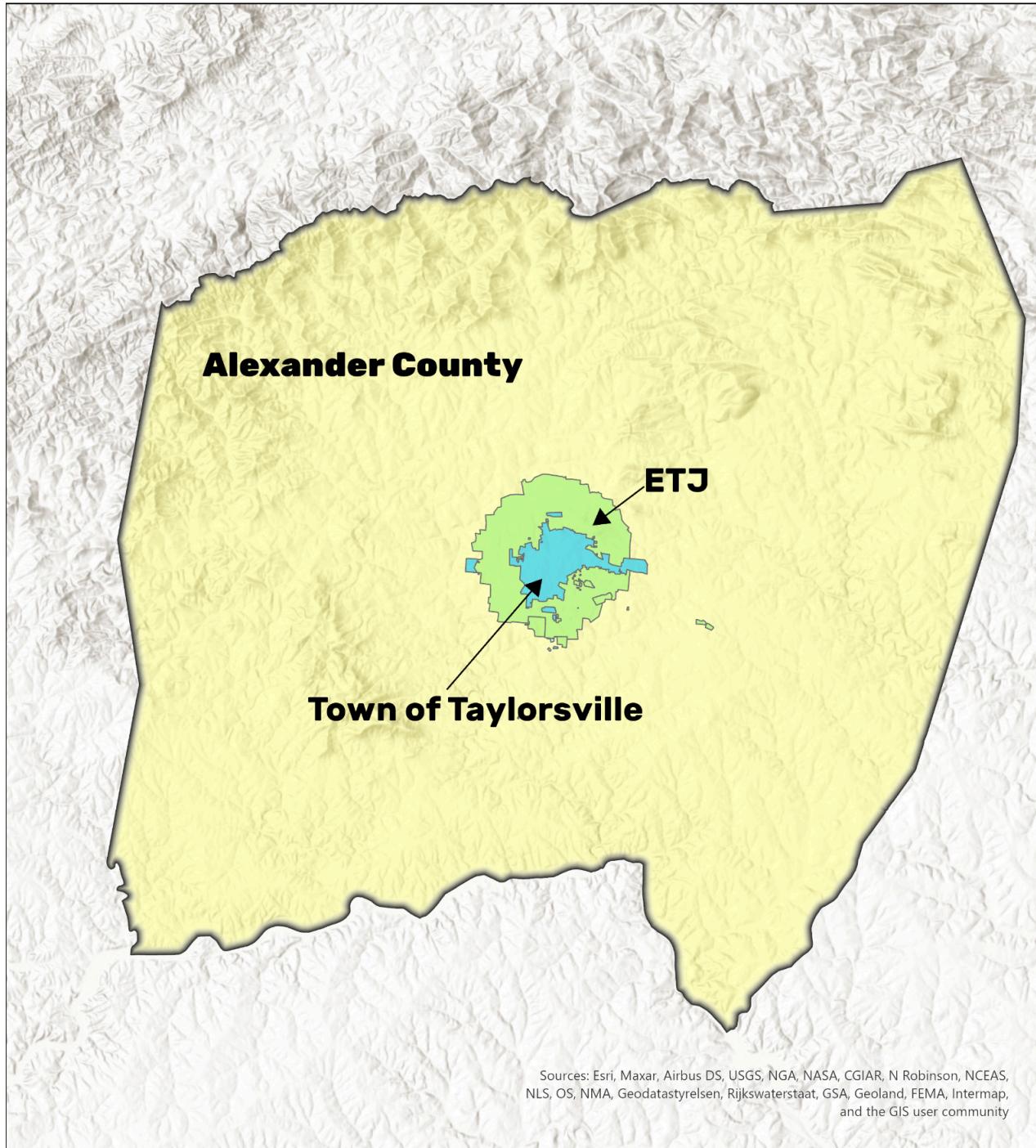
The Taylorsville Town Council

The Taylorsville Town Council is the final authority on most legislative land use matters in the Town of Taylorsville and the **ETJ**. The ETJ, or Extraterritorial Jurisdiction, is an area surrounding a city's corporate limits where the city can regulate planning and development activities, even though the area isn't officially part of the city.

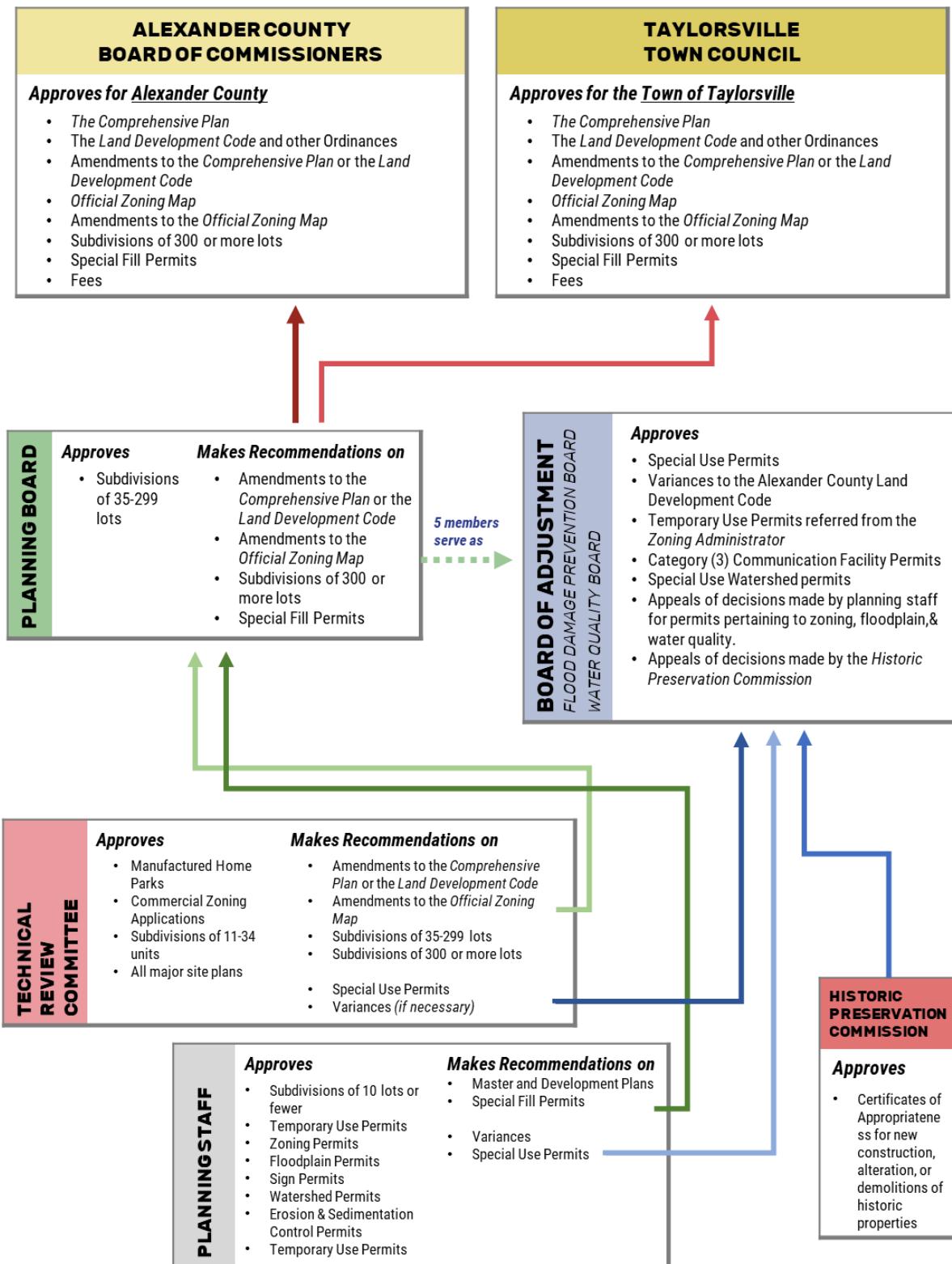
The Town of Taylorsville has opted to adopt the Alexander County Land Development Code and Zoning Map, and contracts with the county for Planning and Zoning services. The current agreement lasts through 2027, but can be extended.

Any changes to the Zoning Map in the Town of Taylorsville must be approved by the Taylorsville Town Council.

Legislative Jurisdictions Map



Land Use Approval Process Diagram



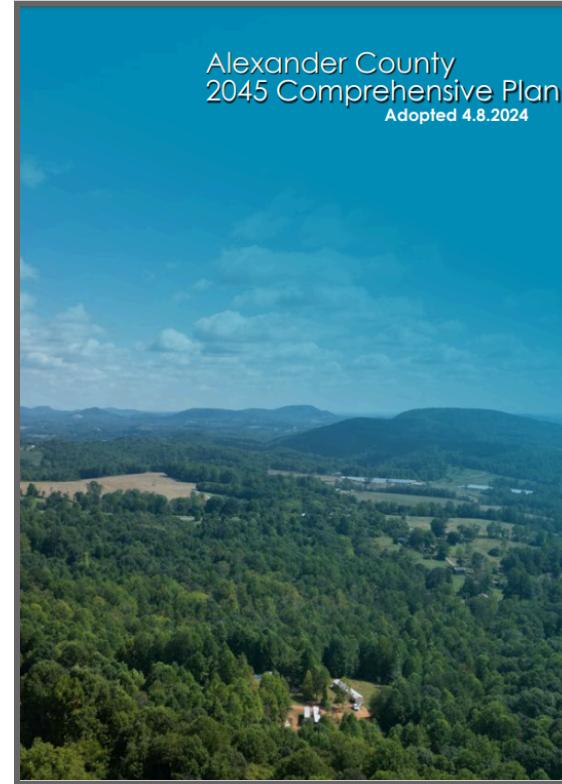
Key Planning Documents in Alexander County

Land use decisions in Alexander County are derived from a set of interrelated plans, codes, and statutes that establish both the vision and the legal authority for how the county grows and develops. Every member of the Planning Board should be familiar with the key documents that shape land use governance in the county.

The Alexander County 2045 Comprehensive Plan

The Comprehensive Plan is the county's primary long-range planning document. It was adopted by the Board of Commissioners on April 8, 2024, after nearly a year of public engagement, staff drafting, and Planning Board review. It was developed under the leadership of Planning Director Brian Burgess, with contributions from county departments, a steering committee composed of residents and elected officials, and the broader public.

Required under North Carolina General Statutes §160D-501, a comprehensive plan is a legally mandated foundation for zoning authority in this state. The law requires that all zoning decisions, including rezonings and text amendments, must include a statement of consistency with an adopted comprehensive plan. As such, the 2045 Comprehensive Plan has direct regulatory implications, even though it is not itself a regulatory document.



The 2045 Plan outlines the county's vision for sustainable growth that also protects the area's rural character and natural resources. Its chapters address land use, housing, economic development, transportation, infrastructure, environment and recreation, and cultural resources.

It also includes a Future Land Use Map, which serves as a visual policy guide for rezonings, conditional zoning decisions, and public infrastructure planning.

The Plan is a living document, intended to be updated every 5–10 years to reflect changing conditions, priorities, and demographics.

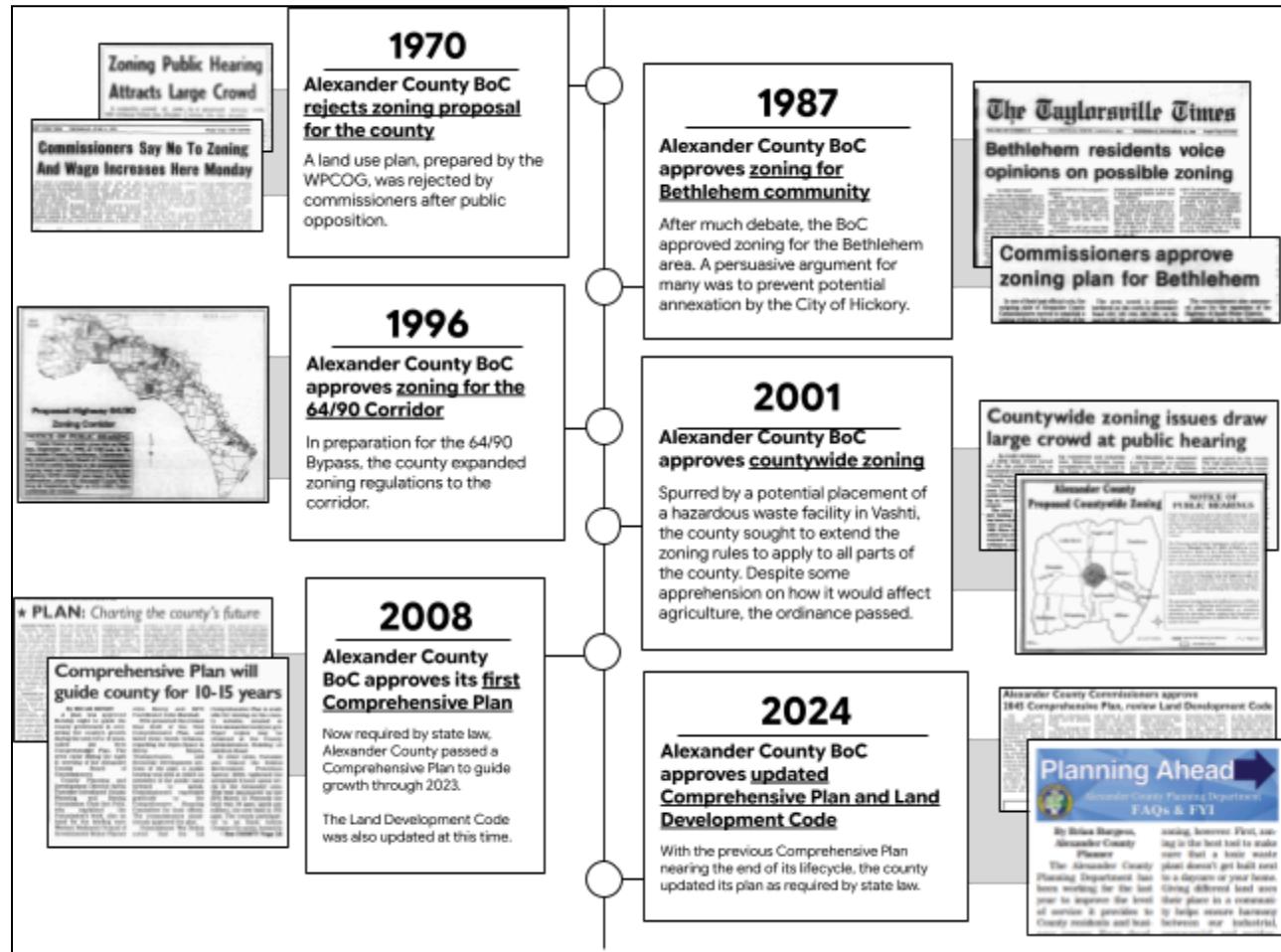
The Alexander County Land Development Code (LDC)

The Land Development Code (LDC), Chapter 154 of the Alexander County Code of Ordinances, is the regulatory document that governs zoning, subdivision, signage, landscaping, floodplain management, erosion control, and other land use matters in the county. It implements the policies articulated in the Comprehensive Plan through enforceable standards.

Alexander County's first zoning ordinance was enacted in 1987 specifically for the Bethlehem area in response to rapid growth and potential annexation from the City of Hickory.

In 2001, the county expanded zoning to cover the entire county. The current LDC was adopted in May 2024.

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ALEXANDER COUNTY ZONING TIMELINE

The LDC is structured in a series of articles and subparts. It includes detailed standards for:

- Zoning districts (residential, commercial, industrial, mixed-use, etc.);
- Permitted and special uses (via a comprehensive use table and supplemental requirements);
- Subdivision types, road and utility standards, and review procedures;
- Environmental protections such as stormwater control, floodplain development, and water quality buffers;
- Signs, landscaping, parking, and lighting;
- Administrative procedures for development review, appeals, variances, and amendments.

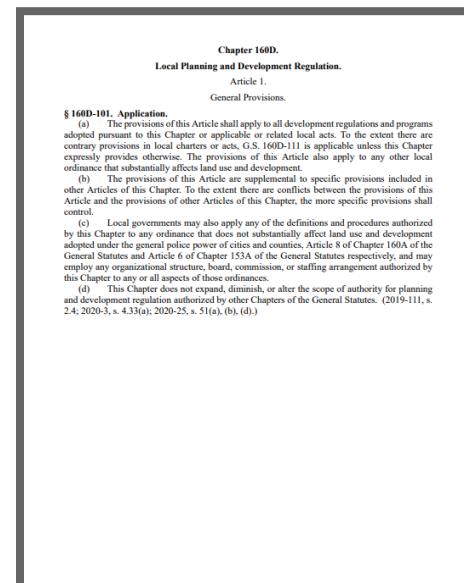
Importantly, the LDC codifies the structure of land use decision-making bodies—including the Planning Board, Board of Adjustment, Technical Review Committee (TRC), and Historic Preservation Commission—and outlines their jurisdiction, procedures, and criteria for decision-making. It also identifies the various administrator roles and the process for enforcement and compliance.

Chapter 160D of the North Carolina General Statutes

Chapter 160D of the North Carolina General Statutes is the state law that consolidates and modernizes all statutes related to local government planning and development regulation. Chapter 160D serves as the unified legal foundation for all zoning, subdivision, and land development regulation in North Carolina.

Chapter 160D outlines the powers and procedures that local governments must follow. It includes:

- Definitions of administrative, legislative, and quasi-judicial decisions;
- Procedural rules for public notice, hearings, and appeals;
- Requirements for the adoption and consistency of zoning and subdivision regulations;
- Standards for conditional zoning, vested rights, development agreements, and moratoria;
- Clarifications of the roles of governing boards, planning boards, and boards of adjustment.



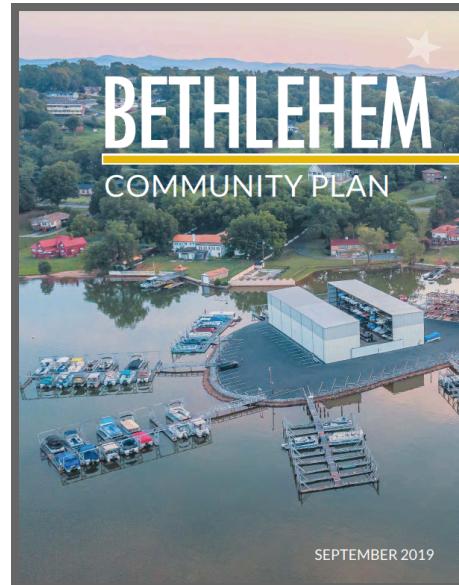
All decisions regarding land use in Alexander County, whether by Planning Staff, the TRC, the Planning Board, or the County Commissioners must be in compliance with Chapter 160D of the North Carolina General Statutes.

The Bethlehem Community Plan

The Bethlehem Community Plan is a small area plan developed to address land use and development challenges specific to the Bethlehem area, which has historically been the most rapidly growing part of the county. The Bethlehem plan is a detailed supplement to the countywide Comprehensive Plan.

The Bethlehem Plan focuses on maintaining community character, protecting Lake Hickory's water quality, and guiding residential and commercial development along NC Highway 127 and Shiloh Church Road. It identifies areas for infill development, transportation improvements, and specific design guidelines intended to preserve a small-town feel while accommodating growth.

Although not regulatory in itself, the Bethlehem Plan is referenced during rezonings, subdivision approvals, and infrastructure planning in that area. It is considered a "small area plan" under 160D-501(c), meaning it may serve as the basis for consistency statements for rezoning decisions.

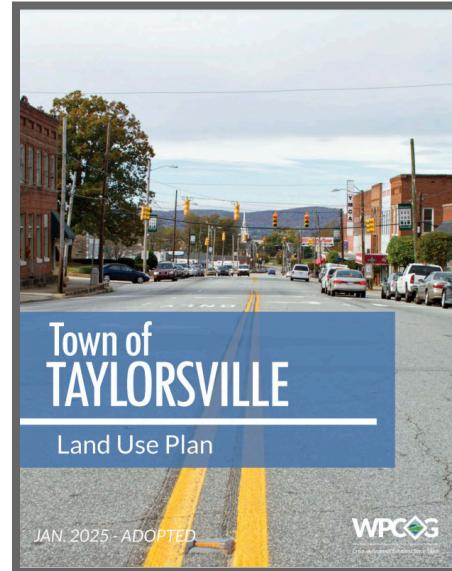


The Taylorsville Land Use Plan

The Taylorsville Land Use Plan is a joint plan designed to guide development in and around the Town of Taylorsville, including the extraterritorial jurisdiction (ETJ) area.

The plan includes strategies to address development pressure along corridors such as NC 16 and NC 90 and to manage transitions between urban and rural land uses.

Like the Bethlehem Plan, the Taylorsville Land Use Plan is referenced during rezonings, subdivision approvals, and infrastructure planning in that area and is considered a "small area plan" under 160D-501(c), meaning it may serve as the basis for consistency statements for rezoning decisions.



Maps

Maps are foundational tools in land use planning because they apply broad policies to specific geographic areas. While written plans express goals for growth, conservation, housing, infrastructure, and economic development, maps show where those goals should happen.

In Alexander County, two primary maps guide land use decisions: the Future Land Use Map and the Zoning Map.

The Future Land Use Map

The Future Land Use Map is part of the Alexander County 2045 Comprehensive Plan. It is a policy map, meaning it is not regulatory by itself, but it shows how land is intended to be used over the coming decades. The Future Land Use Map helps identify which areas are best suited for urban development, which should remain rural or agricultural, and where commercial or industrial activity is appropriate, with each area designated as a particular category.

Future Land Use Categories

- **Urban Service Area (USA)**
 - The Urban Service Area encompasses areas in and around the **Town of Taylorsville**, as well as the **Bethlehem**, **Hiddenite**, and **Stony Point** communities. These areas are envisioned to have access to water and sewer and to support the highest residential densities and commercial and industrial development. Public economic development investments in Alexander County should be primarily focused within the Urban Service Area.
- **Community Service Center (CSC)**
 - Community Service Centers are located in unified development concentrations at intersections of selected thoroughfares and in central locations that are convenient to nearby residential development so as to minimize problems associated with "strip" commercial development. Community Service Centers should be priority targets of investments for sewer and water, public transportation, greenways, other general road improvements, and other appropriate infrastructural improvements
- **Rural Transition Area (RTA)**
 - The Rural Transition Area is currently rural in character, though it contains some limited pockets of higher-density residential and commercial development. Land use policies and regulations in this area are intended to support moderate- to low-density residential growth that remains consistent with a rural setting, while allowing for more compact development around designated Community Service Centers. The lack of water and sewer

infrastructure is the primary constraint on urban-style development within the Rural Transition Area. To preserve the area's natural and agricultural resources, the County should incorporate strong incentives into its land development ordinances to encourage the protection of sensitive environmental areas and prime farmland.

- **Rural Agricultural Area (RAA)**

- The Rural Agricultural Area includes the portions of Alexander County that are predominantly rural, with low-density residential development interspersed with substantial areas of farmland and undeveloped land. Land use policies in the RAA are designed to preserve this rural character and support the continued use of land for agriculture and open space. Because most parts of the RAA are located far from existing sewer infrastructure, the extension of such services is largely infeasible. As a result, residential densities in the Rural Agricultural Area should remain significantly lower than those in either the Urban Services Area or the Rural Transition Area.

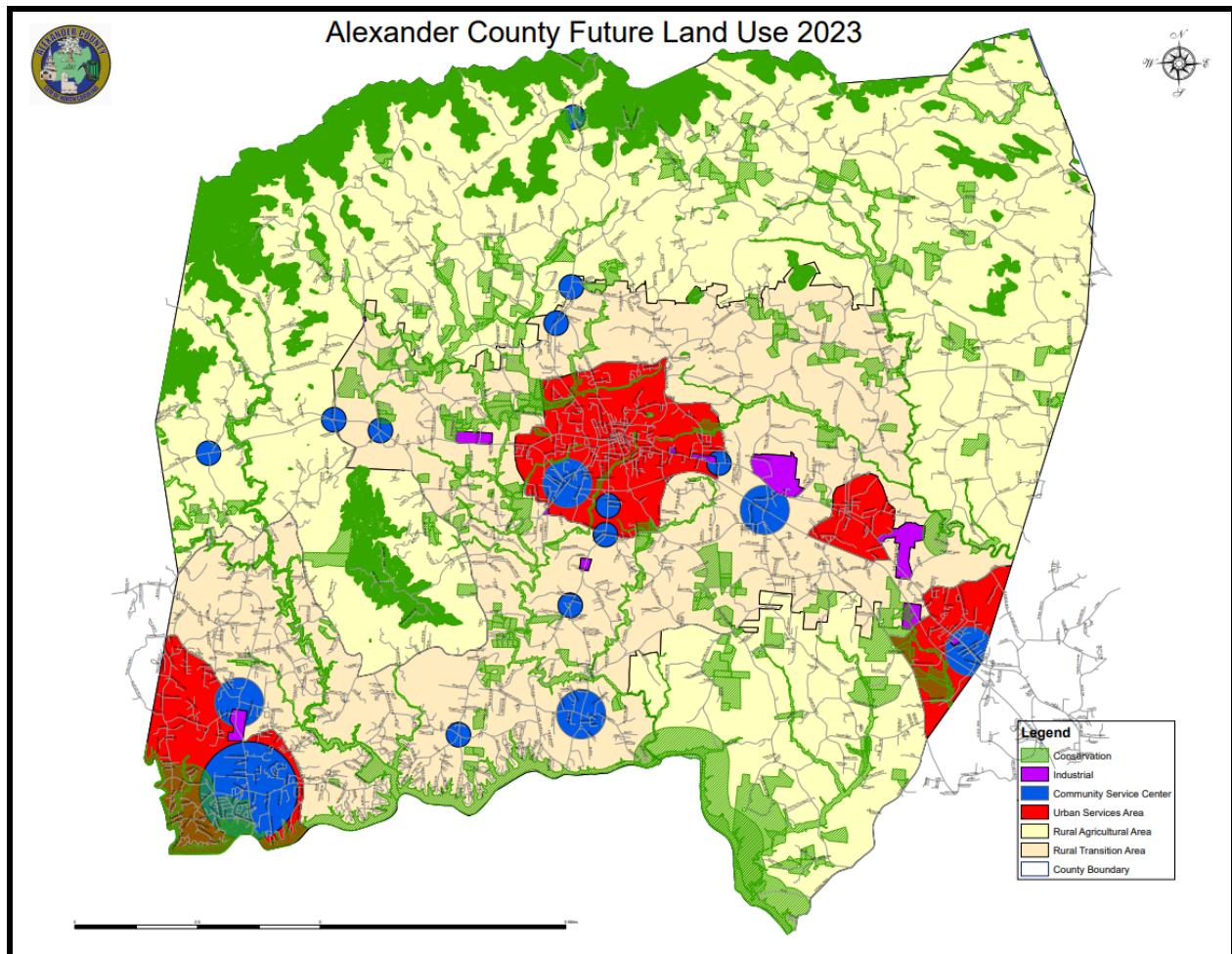
- **Industrial**

- Most defined industrial areas should lie within the Urban Services Area, and in other areas on a very limited basis. Most industrial uses should be segregated from other uses with the exception of Regional Commercial uses. Industrial areas depicted on the Future Land Use Map are derived from existing industrial zoning districts. It is intended that the Countywide Community Plans will further refine the location, extent, and intensity of future industrial areas.

- **Conservation**

- This category includes land areas that are intended to remain largely in their natural state, with only limited development. Such areas should be targeted for protection through regulations and incentives

Future Land Use Map



The Zoning Map

The Zoning Map is a regulatory tool that legally determines what land uses are permitted on each parcel. It divides the county into zoning districts—typically residential, commercial, industrial, and mixed use districts, as well as any subsets thereof—and sets specific rules for the land use therein, such as building types, lot sizes, setbacks, and density. The Alexander County Land Development Code has a table of permitted uses about what specific land uses can occur in what zones. Only the County Commissioners can authorize a change to the Zoning Map.

When the county was rezoned in 2024 with its current zoning map and zones, the Future Land Use Map was the guide for which properties and areas would be placed in which zones. When reviewing a rezoning request, the Planning Board considers whether the proposed change supports the long-term vision shown in the Future Land Use Map.

Alexander County Zones

Residential District One (R1)	<p>The purpose of Residential District One (R1) is to foster orderly growth where the principal use of land is residential. The intent of this district is to allow for <u>medium</u> to <u>high</u> density residential development.</p> <p>This general use district is typically meant to be utilized in areas designated as Urban (USA) in the Comprehensive Plan.</p>
Residential District Two (R2)	<p>The purpose of Residential District Two (R2) is to foster orderly growth where the principal use of land is residential. The intent of this district is to allow for <u>low</u> to <u>medium</u> density residential development. It is also the intent of this district to allow for flexibility in the continuation of existing nonresidential uses.</p> <p>This general use district is typically meant to be utilized in areas designated as Rural Transitional (RTA) in the Comprehensive Plan.</p>
Residential District Two Rural (R2R)	<p>The purpose of Residential District Two Rural (R2R) is to foster orderly growth where the principal use of land is residential. The intent of this district is to allow for <u>low</u> to <u>medium</u> density residential development and <u>rural commercial</u> and <u>light industrial</u>.</p> <p>This general use district is typically meant to be utilized in areas designated as a Rural Transitional Area (RTA).</p>
Residential District Three (R3)	<p>The purpose of Residential District Three (R3) is to foster orderly growth where the principal use of land is low density residential.</p> <p>This general use district is typically meant to be utilized in areas designated as a Rural Agricultural Area (RAA).</p>
Waterfront Residential District (WR)	<p>This district is established for residential development <u>on or adjacent to waterfront property</u> which is navigable for small recreational-type boats and watercraft. The district is intended to maintain and promote <u>low-density single-family</u> development and is intended to provide protection of the existing waterfront character and environmental sensitivity, particularly the water quality and any adjacent wetlands</p>
Mixed Use District (MU)	<p>The purpose of the Mixed Use District (MU) is to foster orderly growth where the principal use of land is commercial and residential. The intent of this district is to allow and provide for <u>commercial</u> and <u>residential</u> development, including retail sales and services, public and private administrations, offices, and other compatible <u>neighborhood</u> commercial uses that minimize sprawl.</p> <p>This general use district is typically utilized in areas designated as Community Service Centers (CSC), but is appropriate in all service areas.</p>

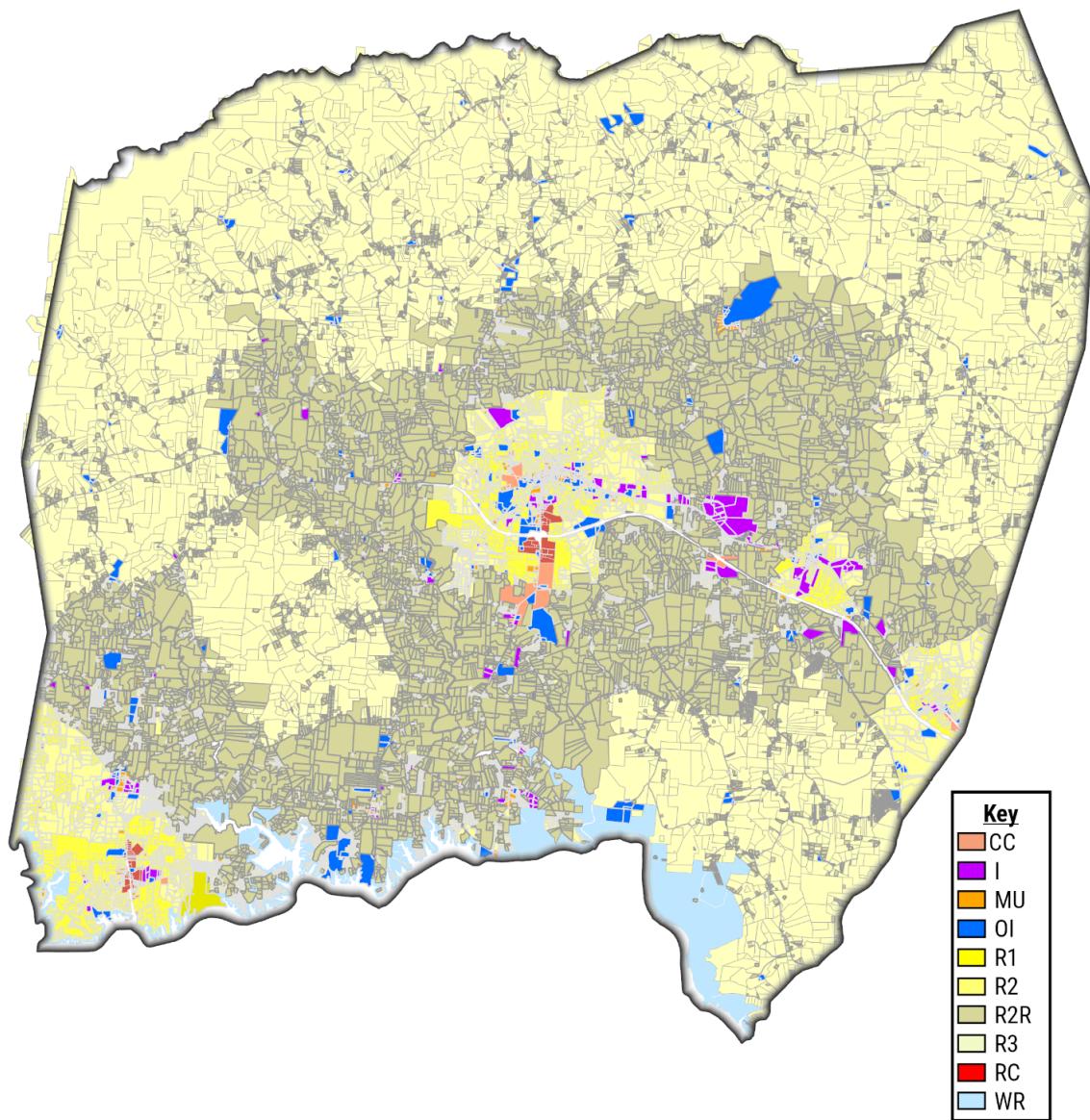
Office Institutional District (OI)	<p>The purpose of the Office Institutional District (OI) is to foster orderly growth where the principal use of land is a mixture of office, institutional, and residential. The intent of this district is to allow for <u>office</u>, <u>institutional</u> and <u>residential</u> development which is compatible with adjacent development and the surrounding community and will minimize congestion and sprawl.</p> <p>This general use district is typically meant to be utilized in areas designated as Community Service Centers.</p>
Community Commercial District (CC)	<p>The purpose of the Community Commercial District (CC) is to foster orderly growth where the principal use of land is commercial. The intent of this district is to allow and provide for <u>commercial</u> and <u>residential</u> development, including retail sales and services, public and private administrations, offices, and other compatible <u>local</u> and <u>community</u> commercial uses that minimize sprawl.</p> <p>This general use district is typically meant to be utilized in areas designated as Community Service Centers, Rural Transition Areas (RTA), or Urban Services Areas (USA).</p>
Regional Commercial District (RC)	<p>The purpose of the Regional Commercial District (RC) is to foster orderly growth where the principal use of land is commercial. The intent of this district is to allow and provide for <u>commercial</u> development, including retail sales and services, public and private administrations, offices, and other compatible <u>local</u>, <u>community</u>, and <u>regional</u> commercial uses that minimize sprawl.</p> <p>This general use district is typically meant to be utilized in areas designated as Community Service Centers or Urban Services Areas (USA).</p>
Industrial District (I)	<p>The purpose of the Industrial District (I) is to foster orderly growth where the principal use of land is a mixture of industrial and heavy commercial. The intent of this district is to allow for <u>industrial</u> and <u>heavy commercial</u> development that is compatible with adjacent development and the surrounding community, will minimize conflict between land uses, and is sensitive to its impact on surrounding land uses and the environment (natural and man-made).</p> <p>This general use district is typically meant to be utilized in areas designated as Industrial.</p>

In addition to the standard zoning districts, Alexander County utilizes **Conditional Zoning** and **Planned Development (PD)** districts to allow for more tailored and flexible development proposals.

- A Conditional Zoning District is a site-specific zoning classification that permits only the uses and development standards explicitly approved as part of a rezoning request. It allows the County to attach binding conditions—such as architectural design, buffers, or infrastructure improvements—to ensure compatibility with surrounding properties.
- A Planned Development District, is intended for large-scale, unified developments that may mix multiple uses (residential, commercial, institutional) and request modifications to standard zoning requirements. These districts must demonstrate that they will provide a superior design, greater public benefit, or enhanced open space than would be achieved under conventional zoning.

Both zoning tools are created through a legislative rezoning process, requiring review by the Planning Board and final approval by the Board of Commissioners.

Zoning Map



PART 3: DECISION-MAKING STANDARDS

Advisory, Quasi-Judicial, & Administrative Considerations

Despite being housed within the same group of individuals, the governmental functions of the Planning Board and the Zoning Board of Adjustment differ greatly. The former is tasked with making advisory and some limited administrative decisions for the county; the latter with quasi-judicial proceedings. It is important to understand the difference in regards to which issues are considered under each function because improper proceedings can be challenged in a court of law.

Advisory Decisions

As a member of the Planning Board, you will make **advisory** decisions. With advisory decisions, you will be either making or recommending general policy rules for the county. They include:

- Comprehensive plan adoption or amendment
- Zoning map changes (rezonings)
- Text amendments to the Land Development Code
- Subdivision ordinance changes
- Recommendations on conditional zoning

In Alexander County, advisory actions by the Planning Board are **recommendations only**. The final authority rests with the **Board of Commissioners**.

Legislative decision-making is less restricted than quasi-judicial proceedings. When making advisory recommendations, board members may consider **public opinion, values, and general welfare**. No formal evidentiary procedure is required, and communications with residents, staff, and applicants before or after meetings are allowed. Decisions are made on your own judgement, and are defensible as long as they are **rational and serve the public interest**.

As a member of the Planning Board, you will make advisory decisions when you:

- Make recommendations for subdivisions of 300 or more lots to the Board of Commissioners.
- Make recommendations for changes to the Zoning Map (rezonings)
- Make recommendations for text amendments to the Land Development Code or the Comprehensive Plan.

Public Hearings

According to NCGS §160D-601, counties must conduct a public hearing prior to adopting or amending a zoning map or ordinance, and that hearing must be held by the governing board. The governing board for those actions are the County Commissioners; the Planning Board only provides recommendations. This means that, when acting as the Planning

Board, there are no requirements for public input. However, since you are allowed to consider the public interest when making a legislative decision, it is often advisable to open a public hearing to allow residents to speak and share their opinions.

Factors to Consider

Courts have ruled that neither the landowners nor the neighbors of a property have a legal right to a particular zoning for a piece of property. That decision is left to the discretion of elected officials, with advice from the Planning Board. Primary factors to consider when making a zoning decision could potentially include:

- The potential land use impacts on the landowner, the neighbors, and the public.
- The suitability of the site for the proposed use
- Impacts on traffic, the environment, neighborhood character, utilities, schools
- Consistency with applicable plans and policies

There is no obligation; however, for the Planning Board to follow precedent established from previous enacted or recommended actions. You are allowed to consider how similar proposals have been decided previously, but each proposal should be determined on its own merits.

You may not consider any background demographics of either the applicant or the potential residents of a development. Nor can you consider whether a project would be owner-occupied.

Conflicts of Interest

State law prohibits a member of an elected board or a planning board from voting on a zoning ordinance amendment where there is a potential financial conflict of interest. The law requires that if the outcome of a vote (such as a rezoning or the approval of a subdivision) is “reasonably likely to have a direct, substantial, and readily identifiable financial impact” on the member, the member must not vote on it. Additionally, planning board members may not vote on any zoning amendment if the owner of property proposed for rezoning or the applicant for a text amendment is a person with whom the member has a close family, business, or associational relationship. G.S. 160D-109(f) defines a close family relationship to be a spouse, parent, child, brother, sister, grandparent, or grandchild, including step, half, and in-law relationships.

A minor financial impact is not disqualifying, and the member is still legally allowed to participate in the discussion if he or she has a conflict—only voting on the matter is prohibited. Additionally, bias in the form of expression of opinions, and contacts with citizens about a matter before a hearing or a vote do not disqualify a member from voting on a legislative decision.

That said, the public trust in the Planning Board is essential for its effective operation. It is best practice to recuse oneself to avoid the appearance of impropriety. If you have any questions, please contact Ben Faulkenberry who represents Alexander County or Monroe Pannell who represents the Town of Taylorsville.

Recommendations to the County Commissioners

According to NCGS §160D-601, all proposed zoning amendments—whether to the text of the Land Development Code or the official zoning map—must be reviewed by the Planning Board before any decision is made by the Board of Commissioners. As part of this review, the Planning Board is required to provide a statement addressing whether the proposed amendment is consistent with the County’s Comprehensive Plan and any other officially adopted plans that may apply. The Planning Board *may* provide a positive recommendation for an action that would be technically inconsistent with the Comprehensive Plan. All that is required is that the rationale for their decision is included in their recommendation. The Planning Board may also include any additional comments or concerns it considers relevant to the decision.

The Planning Board is not required to issue a positive recommendation. Its role is advisory, not final, but its input carries significant weight in the Board of Commissioners' decision-making process. Applications that are not recommended are still forwarded for the Board of Commissioners' consideration.

When forwarding a recommendation—such as for a rezoning, a text amendment, or a subdivision with 300 or more lots—planning staff will prepare a written statement summarizing the Planning Board’s discussion and vote. This statement is reviewed and signed by the Chair or Vice Chair before submission to the Board of Commissioners, ensuring that it accurately reflects the Board’s reasoning and intent.

Quasi-Judicial Decisions

Unlike legislative decisions, when the Planning Board is making a quasi-judicial decision, it is acting like a court. The board is not deciding *what the law should be*, but rather about applying established rules to specific, fact-driven situations. **Quasi-judicial proceedings are more formal, more limited, and more legally constrained** than legislative actions. They are designed to protect individual rights and ensure the consistent, impartial application of the law. Understanding and respecting those boundaries is a core duty of every planning board member.

Differences of Quasi-Judicial Proceedings from Legislative Proceedings

- *Constitutional Rights of Participants*
 - While some constitutional protections, like the 14th Amendment’s guarantee of equal protection, apply to all government actions, quasi-judicial proceedings trigger specific and heightened legal requirements.

At the core of fairness in a quasi-judicial hearing is the right to **due process**. This constitutional guarantee ensures the government will not deprive an individual of a protected property interest without proper legal procedure. In land-use decisions, due process is essential for ensuring fairness, consistency, and accountability.

Key requirements for due process in a quasi-judicial proceeding include:

- Proper Notice: All required parties must receive adequate and timely notice of the hearing.
- Opportunity to Be Heard: Parties with standing must be given a meaningful opportunity to present evidence, cross-examine witnesses, and offer arguments in support of their case.
- An Impartial Tribunal: The decision-making board must act as a neutral arbiter. Board members must avoid bias, disclose any potential conflicts of interest, and refrain from pre-judging the case based on information gathered outside the official hearing (ex parte communication).

Additionally, the **Takings Clause** of the Fifth Amendment prohibits the government from taking private property for public use without paying "just compensation." This applies to both the outright seizure of land (eminent domain) and to government regulations that are so restrictive that they effectively take the property's value. In quasi-judicial proceedings, this issue arises most frequently through the **conditions** a board may attach to a permit approval, such as a special use permit or variance. If a board attaches conditions that a court determines to be too onerous, the applicant may be able to sue and receive compensation (applying the takings clause), or have the board of adjustment's ruling invalidated through due process concerns.

- *Standing*

- In quasi-judicial proceedings, not everyone who attends a meeting has the right to participate fully in the hearing. The law limits full participation—such as presenting evidence, cross-examining witnesses, and appealing decisions—to individuals or parties with **standing**. Standing is a legal concept that determines who is directly and adversely affected by the outcome of a particular case. Generally, individuals with standing include the applicant and owners or residents of property adjacent to or near the subject site, particularly when they can demonstrate potential impacts such as traffic, noise, diminished property values, or environmental concerns.

The board (not staff) determines standing during the hearing. This can be handled at the beginning of the hearing with a formal inquiry. Individuals must provide facts or documentation to support their claim of standing. For example, a neighbor may need to show proximity and describe specific harms they would suffer if the application were approved. Failing to properly establish standing can expose the board's decision to legal challenge, so it is essential to follow the required process carefully.

- *Open Meetings*

- Under North Carolina law, all quasi-judicial proceedings must be conducted in compliance with the **Open Meetings Law** (G.S. Chapter 143, Article 33C). This ensures transparency and provides affected individuals with an

opportunity to participate in land use decisions that may impact their property rights or community. The open meetings requirement extends to all phases of the proceeding: evidentiary hearings, deliberations, and final decision-making. While social or informal gatherings of board members are not considered public hearings, board members must strictly refrain from discussing pending or upcoming quasi-judicial matters in those settings. Any deliberation among a quorum outside of a noticed meeting may violate the Open Meetings Law.

The law mandates that these board of adjustment meetings be open to the public and properly noticed. Notice must include the time, place, and subject of the hearing. In Alexander County, notices must be:

- **Mailed** between 10 and 25 days before the hearing to the applicant or appellant, the property owner (if different), and all abutting property owners (defined as within 100 ft of the property.)
- **Posted on the subject property**, or along an adjacent road right-of-way .
at least 10 days before, but no more than 25 days prior.

Newspaper notices are not required for quasi-judicial hearings.

Due to the Open Meetings law, the board may enter **closed session** only under limited circumstances, such as receiving legal advice from the county attorney. Even then, the board must announce the specific legal reason for the closed session in a public motion, and minutes must provide a general accounting of what occurred without breaching attorney-client privilege.

- **Witnesses**

- In quasi-judicial proceedings, witnesses serve as the foundation of the evidentiary record. Because quasi-judicial decisions must be based on competent, material, and substantial evidence, it is important that both board members and participants understand the rules for witnesses in these cases.
- **Swearing In and Oath**
 - All individuals offering testimony—whether they are parties with standing, local government staff, or members of the public—must be sworn in before speaking. For the Alexander County Board of Adjustment, this is done as a group at the beginning of the hearing. If any additional witnesses come forward after proceedings have commenced, they must be sworn in afterwards to provide testimony. Those who cannot swear for religious or personal reasons may provide a solemn affirmation instead. False testimony is a Class 1 misdemeanor under G.S. 160A-88.
 - Alexander County's Board of Adjustment witness oath reads:

- “Do you solemnly swear or affirm that the evidence you shall give to the board in this action shall be the truth, the whole truth, and nothing but the truth [so help you God]?”

- **Who May Serve as a Witness?**

- Planning staff serve as the primary witness, introducing the case and delivering the staff reports, analysis, and their recommendation. The board of adjustment is under no obligation to follow the recommendation of the planning staff.
- Parties with standing (including applicants, local governments, or neighbors who demonstrate they will suffer special damages) may offer testimony, present evidence, and cross-examine others.
- Other individuals without standing may be allowed to testify as non-party witnesses **at the board's discretion**. These individuals may offer competent and relevant factual evidence, but they do not have rights such as objecting to evidence or cross-examining others.
- Expert Witnesses may be allowed on certain topics—such as property values or traffic impacts. Only witnesses with the appropriate credentials and experience may provide such testimony. Before accepting expert opinion the board must qualify the witness as an expert, establishing credentials on the record. **The chair should prevent any non-expert witness from providing expert testimony.**

- **Legal Representation**

- Only licensed attorneys may examine witnesses, offer legal arguments, or represent a party. Individuals may speak on their own behalf, but not “stand in” for others unless licensed. This includes activities such as introducing evidence, responding to objections, or questioning witnesses.

- **Factual, Material, and Non-Repetitive Testimony**

- It is the role of the chair of the board of adjustment to ensure testimony is:
 - Factual: Testimony should be based on direct observations or objective facts. Personal preferences or speculation are not admissible. The chair should interrupt and prevent non-factual testimony from being entered.
 - Material: Testimony must directly relate to the ordinance's standards and the specific proposal. Commentary on the applicant's character, political opinions, or matters unrelated to land use are inadmissible. The chair should interrupt and prevent immaterial testimony from being entered.
 - Non-repetitive: **Time limits cannot be set for parties with standing**; however, these witnesses cannot filibuster and the chair can cut off testimony when comments become repetitive.

- **Cross-Examination**
 - All witnesses, including non-party individuals, are subject to cross-examination by board members, the applicant, and other parties with standing. They have a right to question the facts presented by witnesses, their standing, or their expertise. To ensure decorum, all cross-examination questions posed by subjects with standing should be directed to the chair, who will then direct the questions to the witness, excluding any that he deems immaterial or repetitive.
- **Evidence**
 - While quasi-judicial standards do not require the high level of assurances necessary for evidence presented in a courtroom, any documents presented by witnesses should be assessed by the board in terms of their trustworthiness. The board should ask questions that determine the authenticity of the evidence. All documents are preserved in the record.
- Subpoenas
 - In quasi-judicial proceedings, boards are empowered to compel testimony and production of evidence through subpoenas to ensure that all necessary and relevant information is available for a fair decision. The authority to issue subpoenas is vested in the board through its chair (or acting chair in the chair's absence). This authority exists under both North Carolina statutory law and common quasi-judicial procedure.

The chair has discretion to issue subpoenas that are:

 - Relevant to the case,
 - Reasonable in nature and scope, and
 - Not oppressive to the person or entity being subpoenaed.

○ Subpoenas are exceedingly rare, and should only be sought with the counsel of the attorney representing the county and/or town.
- Considerations
 - As a result of due process protections, quasi-judicial proceedings have a higher standard than advisory standards in regards to fair considerations. Unlike advisory or legislative decisions, where policy judgments can be made based on a broad range of considerations (including public sentiment, general goals, or board members' own judgment), quasi-judicial decisions must be made **strictly on the basis of the evidence** presented during the evidentiary hearing itself. As a result board members cannot:
 - **Consider personal opinions or general community sentiment not supported by evidence in the record.**
 - Personal preferences or the number of people who speak for or against a proposal cannot influence the outcome unless the

testimony offered meets the standards of competent, material, and substantial evidence. Emotional appeals, generalized fears, or speculation about impacts – even when widely shared in the community – are not a valid basis for decision-making.

- **Rely on facts gathered outside of the hearing, such as private conversations, emails, social media posts, or personal research.**

- Board members must not independently investigate facts related to the case. This includes conducting internet research, reviewing tax records, making inquiries of staff outside the hearing, or collecting information from community members outside the hearing process. All evidence must be presented within the hearing and made available for all parties to hear, respond to, and challenge.
- In fact, any communication about the case that occurs outside the hearing process – whether in person, by phone, email, or social media – *is prohibited*. Even well-meaning conversations with neighbors who simply want to “share their concerns” are considered ***ex parte communication*** and must be avoided. If such contact occurs, the board member must place it on the record at the hearing.

- **Conduct or rely on site visits without proper disclosure.**

- Board members may visit sites individually to better understand physical conditions but may not conduct site visits in groups or with parties to the case. Any observations made during a site visit that could influence a board member’s decision must be disclosed during the hearing so that all parties have the opportunity to respond.

- **Rely on personal familiarity with the property or neighborhood as a substitute for evidence.**

- Board members may be personally familiar with the area involved in the application. However, their private knowledge cannot substitute for evidence presented during the hearing. Any personal familiarity that may influence a board member’s opinion must be disclosed on the record.

- **Burden of Evidence**

- In advisory proceedings, there is no burden of evidence and do not make findings of fact. However, in quasi-judicial proceedings, there is a burden of producing evidence and proving compliance with applicable standards. This burden of evidence falls **initially upon the applicant**. It is not the

responsibility of the staff, board members, or opponents to supply evidence supporting the application.

The applicant must present competent, material, and substantial evidence sufficient to demonstrate that all applicable standards for approval have been met. If the applicant fails to present such evidence, the application must be denied.

If the applicant does provide the relevant, competent and material evidence, the application **must be approved**—unless another party with standing presents opposing evidence.

In that case, the burden of evidence then shifts any opponents to produce competent, material, and substantial evidence showing that the standards have not been met. If such opposing evidence is presented, the board must evaluate the conflicting evidence, resolve factual disputes, and make specific findings of fact in support of its decision.

- *Findings-of-Fact*
 - At the conclusion of a quasi-judicial hearing, the Board must approve a document recording their findings-of-fact and a formal decision must be delivered to the applicant.

Cases Heard Using Quasi-Judicial Standards

- *Variances*
 - A variance allows limited relief from the strict application of zoning and development standards in situations where, because of the unique conditions of a property, compliance would create an **unnecessary hardship**. Variances serve as a *narrowly* drawn exception to ensure that regulations do not operate arbitrarily or inequitably when applied to particular sites.

By statute, variances are limited to adjustments of *physical and dimensional requirements*, such as setbacks, height limits, lot widths, or other measurable site-specific standards. For example, if an unusual lot shape makes it impossible to meet a front setback requirement, the property owner may request a variance to reduce the setback for that specific property. The Board of Adjustment **may not, however, use a variance to authorize a land use that is prohibited in the zoning district**. A variance cannot transform a residential lot into a commercial site or authorize a duplex where only single-family homes are permitted. Those changes fall under legislative processes such as rezoning or ordinance amendments and are outside the authority of the Board of Adjustment.

Additionally, **variances cannot be granted simply because a regulation imposes financial burdens, reduces potential profit, or is personally inconvenient for the applicant.** The purpose of zoning is to impose uniform rules across similarly situated properties; variances exist to address truly exceptional circumstances, not general dissatisfaction with the ordinance.

- **The Legal Standards for Granting a Variance**

- North Carolina law sets out four required findings that the Board must make before granting a variance. These findings are not discretionary; the applicant must present competent, material, and substantial evidence addressing each one.

- **1) The unnecessary hardship results from the strict application of the ordinance.** While every regulation imposes some limitations and creates some hardships, an unnecessary hardship exists when the ordinance's requirements impose an exceptional and disproportionate burden that was not anticipated in its general application. Importantly, current law does not require the applicant to prove that the property would have no reasonable use without the variance. Even if some development is possible, the Board may still find unnecessary hardship if strict compliance imposes significant and particularized difficulty.
- **2) The unnecessary hardship results from conditions that are peculiar to the applicant's property.** For instance, this would be if an unusually narrow or irregular lot shape, a steep slope, or unique legal encumbrances such as overlapping easements may create the type of peculiar conditions that justify relief. By contrast, where many lots in a neighborhood share the same limitations—such as outdated setbacks that leave no room for modern accessory structures—the issue reflects a broader policy question that should be addressed legislatively rather than through individual variances. Similarly, hardships related to an applicant's personal needs—such as accommodating family members or financial constraints—cannot support a variance because they do not arise from the property's physical characteristics.
- **3) The unnecessary hardship is not a self-created hardship.** An applicant cannot establish eligibility for a variance by creating the very problem from which they seek relief. For example, a property owner who subdivides a conforming lot into smaller nonconforming parcels cannot then request a variance to allow construction that would violate setback standards. However, an applicant who

purchases a property that already suffers from physical limitations or prior circumstances may still seek a variance.

North Carolina law makes clear that purchasing property with knowledge of its limitations does not automatically render a hardship self-created.

- **4) The requested variance is consistent with the spirit, purpose, and intent of the ordinance such that public safety is secured and substantial justice is achieved.** This final finding gives the Board discretion to weigh whether granting the variance aligns with the goals of the zoning regulations as a whole and whether it would have any adverse effects on neighboring properties or the public at large. Even when the hardship criteria are met, the Board may deny a variance if it would undermine core purposes of the ordinance or create significant safety concerns.

- **Supermajority Requirement**

- State law requires a supermajority vote to grant a variance; at least four of the five sitting Board members must vote in favor of approval. Vacant seats or recusals are, essentially, counted as votes against the variance.

The structure of the Zoning Board of Adjustment in Alexander County is meant to prevent issues that could arise when absences by Planning Board members could lead to the lack of an ability to achieve the requisite supermajority vote. By having 5 of the members of the Planning Board sit as the Board of Adjustment, there are automatically two alternate seats. Additionally, with the Planning Board seating an alternate member, it is unlikely there would not be enough members to hear a variance to allow it to pass.

- **Special Use Permits**

- A Special Use Permit (SUP) allows certain land uses in specific districts only after careful case-by-case review to ensure that the proposed use fits appropriately on the particular site. These uses are not outright prohibited, nor are they automatically allowed by right; rather, they are permitted if, and only if, the applicant demonstrates that the proposed project satisfies both the general ordinance requirements and any additional special criteria attached to that use.

Alexander County's permitted uses are organized in the Table of Permitted and Special Uses found in Subpart D of the Land Development Code (LDC), beginning at §154-59. For each zoning district, the table identifies whether a particular land use is:

- P: Permitted by right;
- S: Allowed only by Special Use Permit;
- If it has neither (P) or (S), it is not allowed at all.

- Where the table assigns an "S" to a use, a Special Use Permit is required. The applicant must demonstrate they meet accompanying supplemental requirements found in Subpart E of the same Article that apply to that usage.
- **Legal Standards for Special Use Permits in Alexander County**
 - Unlike variances, which follow uniform state standards, the standards for special use permits are set directly by the county's ordinance. The initial burden rests on the applicant to show:
 - The proposed use is specifically listed as a special use in the applicable zoning district, as shown in the Table of Permitted and Special Uses.
 - All ordinance standards applicable to that use—including general development standards and any supplemental requirements listed for that use—have been or will be met.

Additionally, the Zoning Board of Adjustment may require the applicant to demonstrate that the proposed use:

- Is consistent with the County's Comprehensive Plan, Long Range Transportation Plan, and applicable municipal transportation plans.
- Minimizes effects of noise, glare, dust, odor, and solar access impacts on neighboring residents or businesses.
- Minimizes environmental impacts on nearby groundwater, surface water, wetlands, threatened or endangered species, archaeological sites, historic preservation sites, and unique natural areas.
- That adequate provision has been made for:
 - Safe and convenient ingress and egress, considering pedestrian and vehicular safety and traffic flow;
 - Sufficient off-street parking and loading areas;
 - Adequate utilities, including availability and compatibility of infrastructure;
 - Appropriate buffering and landscaping, addressing type, location, and dimensions;
 - Proper location, size, and design of proposed structures
- The applicant bears the burden of producing this evidence. If no contrary evidence is presented, and the applicant shows full compliance, the permit must be approved. Unlike legislative rezoning or policy decisions, the **Board may not deny a special use permit**

based on general objections, personal preferences, or generalized public opposition. The decision must be strictly based on whether the evidence shows compliance or noncompliance with the ordinance standards.

- Appeals of Staff Decisions
 - In addition to hearing applications for variances and special use permits, the Alexander County Board of Adjustment serves as the body that hears appeals of decisions made by administrative staff. These appeals allow property owners and other affected parties to challenge interpretations, determinations, and enforcement actions taken by zoning staff in administering the Land Development Code (LDC).

These appeals are quasi-judicial in nature and require the Board to determine whether staff correctly applied the ordinance based on the law and facts presented. Importantly, appeals of staff decisions are not opportunities to request **policy changes, new variances, or generalized relief**. In this area, the Board functions as an appellate tribunal reviewing the correctness of a staff decision.
 - **What Types of Staff Decisions May BeAppealed**
 - Not every action taken by staff can be appealed. Only final and binding administrative decisions are subject to appeal. These include:
 - Formal interpretations of ordinance language
 - Zoning permit denials
 - Notices of violation or enforcement orders
 - Informal conversations, preliminary opinions, verbal advice, or general information provided by staff are not appealable decisions. Inaction by staff also cannot be appealed.
 - **Appeals Rules**
 - Whenever staff issues a final binding decision, written notice must be provided to the affected property owner and to any requesting party. This written notice starts the clock for filing an appeal.
 - Appeals may be filed by any party with legal standing under state law, which includes the property owner, the applicant, the local government, or any person who will suffer special damages as a direct result of the decisions (such as neighboring property owners.)
 - Appeals must be filed with the County **within 30 days after receiving notice of the decision**. For parties receiving written notice from staff, the 30-day period begins upon receipt of that notice. For others, the appeal period may begin upon actual or constructive

notice – for example, when construction commences on a site, or when public signs are posted announcing the decision.

- The appeal freezes enforcement of the staff decision while the matter is pending, except in limited situations where immediate action is necessary to prevent imminent harm.
- Because staff act as a party in these proceedings, there is an elevated risk of improper ex parte communications between Board members and staff prior to the hearing. Board members must avoid any private conversations with staff about the appeal outside of the hearing itself.

- **Appeals Hearings**

- During an appeal of a staff decision, the staff member whose decision is being appealed serves as a party to the case, defending the decision and testifying to the basis for the determination.

Prior to the hearing, the staff member must compile the full record of decision – including all documents, applications, correspondence, and supporting materials that formed the basis of the decision – and provide that record to the Board and to the appealing party

- During the hearing:
 - The staff member presents the record and testifies as a witness.
 - The appellant presents their case challenging the decision.
 - Both sides may present additional evidence if necessary to clarify disputed facts.
 - Legal arguments and statutory interpretation may play a central role, especially in interpretation cases.
- In many appeals, the underlying facts may not be in dispute. The central question may be a legal one: whether staff correctly interpreted or applied ordinance language to the facts presented. However, if factual disputes arise (for example, whether certain work was performed without a permit), the Board must receive evidence on those issues and make appropriate factual findings.

- **Legal Standards for the Appeals of Staff Decisions**

- In appeals of staff decisions, the Board may:
 - Affirm the decision entirely;
 - Reverse it in whole or in part;
 - Modify the decision;
 - Issue any decision that staff could have made based on the facts and ordinance

- The Board's decision must be based solely on the evidence presented at the hearing, including the original record and any additional competent, material, and substantial evidence introduced during the hearing. The Board must adopt written findings of fact explaining how it resolved any contested facts, what evidence was relied upon, and how it applied the ordinance provisions.

- **Interpreting the Ordinance**

- In many appeals, the Board must interpret specific ordinance language. North Carolina courts provide guidance on how to interpret zoning ordinances:
 - The plain language of the ordinance controls where it is clear.
 - The Board must always rely on the language of the ordinance itself, any defined terms, purpose statements, and other interpretive guidance contained in the LDC.
 - Where terms are undefined, dictionary definitions may be used.
 - If ambiguity exists, more specific provisions control over general ones.
 - The ordinance should be read to avoid absurd or unreasonable results.
 - Any remaining ambiguities should generally be resolved in favor of the property owner.

- Appeals Regarding Certificates of Appropriateness

- In Alexander County, decisions on **Certificates of Appropriateness (COA)** are made by the Historic Preservation Commission (HPC). A COA is required before any alteration, construction, demolition, or relocation of exterior features within a designated historic district or landmark. The HPC determines whether proposed changes are congruous with the special character of the district or landmark based on the standards adopted for historic preservation.

If an applicant or other qualified party believes that the Historic Preservation Commission erred in granting or denying a certificate of appropriateness, the decision may be appealed. Appeals follow the procedures established by North Carolina law and Alexander County ordinances:

- Appeals must be filed within 30 days of the issuance of the Commission's decision.
 - The Board of Adjustment hears these appeals in the nature of certiorari review, meaning the Board reviews the record of the Historic Preservation Commission's hearing to determine whether the decision:
 - Applied the correct legal standards;

- Was supported by competent, material, and substantial evidence; and
- Was made without procedural errors.
- The Board of Adjustment does not hold a new full evidentiary hearing or substitute its own judgment for that of the HPC. Its role is to evaluate whether the decision was lawful based on the record presented.

Findings of Fact

In all quasi-judicial proceedings – whether for variances, special use permits, conditional use permits, or appeals – the decision-making board must adopt specific, written findings of fact that explain how the board evaluated the evidence presented and how it applied the legal standards required by the ordinance or statute. Findings of fact are not simply a formality; they are the foundation of every lawful quasi-judicial decision.

Findings of fact serve several critical functions:

- They demonstrate that the decision was based on evidence presented in the hearing, rather than on personal opinions, outside information, or public pressure.
- They show how the board resolved conflicting evidence.
- They allow any reviewing court to evaluate whether the board correctly applied the law to the facts.
- They protect the integrity and transparency of the decision-making process.

Without clear findings of fact, even a well-intentioned decision **may be overturned by the courts** for failing to meet basic legal requirements.

Here in Alexander County, the Findings of Fact Report is prepared by the Alexander County Planning Board staff. They are based on the discussion among members of the Zoning Board of Adjustment, and are presented to the chair for approval. They:

- Cite specific testimony, exhibits, or reports relied upon.
- Acknowledge and address any conflicting evidence, explaining why one version was accepted over another.
- Tie each fact directly to the standards required for the type of decision being made.

Board members should carefully articulate their reasoning during deliberations to assist in drafting the written findings.

The Role of Planning Staff in Quasi-Judicial Hearings

When an application is submitted for a quasi-judicial decision, such as a special use permit or a variance, staff begin by reviewing the materials for completeness and ensuring that the case will be ready for hearing. This often includes a planning review period, during which staff analyze how the application aligns—or fails to align—with applicable ordinances. Staff then prepare a report summarizing the facts, identifying the relevant code provisions, and offering professional planning insight.

Importantly, staff do not determine legal standing. Whether an applicant or opponent has standing to participate in the hearing is a matter for the Planning Board (or Board of Adjustment) to determine at the outset of the evidentiary process, based on sworn testimony and evidence.

Staff may assist in scheduling the hearing, ensuring legal notices are posted, preparing maps or visuals, and helping to structure the order of proceedings. However, their role is limited to providing background, not deciding outcomes. The Board must make its own findings based solely on the evidence provided during the hearing itself.

Conditions

In quasi-judicial proceedings, the Board of Adjustment has the authority to impose **conditions** on its approvals to ensure that a variance or special use permit complies with applicable standards and minimizes adverse impacts. Conditions provide flexibility by allowing the Board to approve requests while addressing specific concerns raised by evidence during the hearing.

However, because conditions modify the rights of property owners, they must be used carefully and only within legally authorized boundaries.

In every case, **conditions must be supported by competent, material, and substantial evidence in the hearing record.**

- Legal Requirements for Conditions
 - For a condition to be valid, it must satisfy the following legal standards:
 - **Direct Relationship to Applicable Standards**
 - The condition must relate to a specific ordinance standard or criterion applicable to the decision being made.
 - Conditions cannot be imposed based on general concerns or desires unrelated to the governing standards.
 - **Supported by Evidence**
 - The record must contain factual evidence justifying the need for the condition. Conditions cannot be imposed based on speculation, unsupported fears, or generalized public opposition.
 - **Reasonable and Proportionate**
 - The condition must be reasonably related to mitigating identified impacts and not impose unnecessary or unrelated burdens. The Board may not require excessive or disproportionate measures beyond what is necessary to ensure compliance.

■ **Within the Board's Authority**

- Conditions may not require actions that the Board has no statutory authority to impose (for example, off-site improvements, dedication of land, or monetary payments unless specifically authorized by law).
- Any required exactions must comply with separate legal standards for land use exactions and takings law.

- Examples of Appropriate Conditions
 - Requiring installation of additional landscaping or buffering to reduce visual or noise impacts on neighboring properties.
 - Limiting the hours of operation for a use where noise or traffic impacts may arise during certain times.
 - Adjusting building placement or design to ensure compatibility with neighboring development.
 - Requiring specific design elements on a historic structure to maintain architectural congruity.
- Common Mistakes to Avoid
 - The Board must exercise caution to avoid invalid or problematic conditions, such as:
 - **Vague or open-ended conditions** (e.g., "the applicant shall address traffic concerns to the Board's satisfaction").
 - **Conditions imposed after the hearing based on later discussions** not supported by evidence in the record.
 - **Conditions that restate ordinance requirements** without adding any site-specific clarification.
 - **Conditions not tied to the ordinance standards** or adopted planning policies.
 - **Conditions based on negotiations or agreements outside the hearing process.**
- The Role of Consent
 - While applicants often voluntarily agree to conditions in order to address concerns raised during the hearing, consent alone does not validate a condition that is otherwise unlawful or unsupported by the evidence. Voluntary consent may simplify the hearing process but does not substitute for the Board's legal obligation to ensure that all conditions meet the required standards for quasi-judicial decision-making.

All conditions must be discussed and adopted during the hearing, supported by evidence presented, and included in the Board's written findings and order. All conditions must be clearly stated in the Board's written decision and order. The written order should:

- Specify the exact nature and scope of each condition;
- State the evidence upon which each condition is based;

- Explain how each condition relates to ordinance standards.

The Board's failure to adequately document the basis for a condition can expose the decision to legal challenge.

Recusals

Because quasi-judicial decisions *require* impartial, evidence-based judgment, it is essential that all members of the Board of Adjustment approach each case without bias, conflict of interest, or personal involvement. In some circumstances, a Board member may be required—or may request—to recuse themselves from participating in a particular case.

Recusal protects both the fairness of the hearing and the legal validity of the Board's decision. A failure to properly handle recusal issues can render the entire proceeding vulnerable to legal challenge..

Under North Carolina law, a Board member shall not participate in any quasi-judicial matter where:

1. The member has a **fixed opinion prior to the hearing that is not susceptible to change** based on the evidence presented.
 - In quasi-judicial proceedings, board members must remain open-minded until all testimony has been presented. A Board member may have prior knowledge about the property or general familiarity with the issues. That alone does not require recusal. However, if the member has already formed a firm position before hearing any evidence—and is unwilling or unable to consider opposing evidence—recusal is required.
 - This includes situations where a Board member has received information or arguments outside of the hearing process through **ex parte communications** (private conversations, emails, social media posts, or informal discussions with applicants, neighbors, or staff outside the hearing). Ex parte communications open the board up to potential legal challenges, and if they have occurred, that member should recuse themselves.
2. The member has a **direct financial interest in the outcome of the matter**.
 - A member must recuse if they or their immediate family stand to gain or lose financially from the outcome. This includes ownership of nearby properties whose value might be directly affected or any business interest that would benefit from the decision.
3. The member has a **close personal relationship** with any affected party, applicant, or property owner.
 - A Board member who has a close familial, personal, or professional relationship with any party involved in the matter should recuse. This includes relatives, close friends, business partners, employers, or others where impartiality could reasonably be questioned.

4. The member has a **demonstrated conflict of interest** under other applicable laws or ethical standards.
 - Occasionally, other statutes or local ethics policies may create additional recusal obligations, such as representing clients involved in the matter (for attorney members), or prior involvement as staff or an applicant in the same case.

If a Board member believes they may have a conflict, they should voluntarily disclose the potential conflict before the hearing begins. The remaining Board members will then vote to determine whether recusal is appropriate. The Board as a whole decides whether recusal is warranted. A simple majority vote of the Board members present (excluding the challenged member) decides the issue. If recusal is granted, an alternate Board member (if available) may be seated to fill the vacant seat for that case.

While voluntary recusal is encouraged where doubt exists, Board members should not recuse merely to avoid difficult or unpopular decisions. Every Board member has a duty to serve unless a true conflict exists.

When in doubt: disclose early, discuss openly, and let the Board decide.

Appeals of Board of Adjustment Decision

All appeals of quasi-judicial decisions of the Board of Adjustment are appealed directly to the NC Superior Court.

Administrative Decisions

In addition to its legislative and quasi-judicial roles, the Alexander County Planning Board serves in a limited **administrative decision-making capacity** for certain subdivision applications. Unlike quasi-judicial matters, administrative decisions do not involve discretion, weighing of evidence, or policy judgment. The Planning Board's role is to determine whether an application complies with the objective standards established in the County's Land Development Code (LDC).

The Planning Board's administrative authority is limited to reviewing **major subdivisions of 35 to 299 lots**, although the Technical Review Committee or the Subdivision Administrator may refer smaller subdivisions to the board. (Major subdivisions containing 300 or more lots are reviewed legislatively as **Conditional Zoning Districts** by the Board of Commissioners.)

In North Carolina subdivision review and zoning regulation are **two distinct legal authorities** granted to local governments, even though they often interact on the same piece of land.

- **Zoning authority** controls *what* land uses are allowed on a parcel (residential, commercial, industrial, etc.), along with standards like setbacks, height limits, densities, and sometimes design requirements.
- **Subdivision authority** governs *how* land is divided into separate legal parcels and whether infrastructure (like roads, utilities, stormwater, and public improvements) meet standards for serving those parcels.

A parcel may be properly zoned for residential use under the zoning map, but subdivision approval is still required to divide that property into buildable lots. Subdivision approval **does not revisit the policy question of whether residential use is appropriate**—that question was decided by zoning. Instead, subdivision approval evaluates whether the proposed division of land meets the **technical standards** of the subdivision ordinance: lot size, road access, drainage, utilities, connectivity, etc.

Administrative review is **standards-based** and involves *no policy discretion*. The Planning Board's responsibility is to ensure that the subdivision application complies with all applicable provisions of the Land Development Code and satisfies the subdivision regulations, road standards, utility requirements, stormwater standards, and all other technical regulations.

As a result:

- The Board **cannot deny** a subdivision application because it believes the development is "too big" or "not desirable for the area" if the subdivision fully complies with ordinance standards.
- The Board **cannot impose zoning-like policy judgments** (e.g., "We wish this were larger lots" or "We don't like townhomes here") during subdivision review.
- The Board may **only evaluate compliance with subdivision regulations** – roadway design, drainage, lot layout, utility access, connectivity, open space requirements, etc.

The Board may not impose personal preferences or consider generalized public opposition during administrative review. If an application meets the standards, it must be approved. If it fails to meet standards, it must be denied.

Administrative Review by the Planning Board

Prior to reaching the Planning Board, subdivision applications are reviewed by staff:

- The **Subdivision Administrator** reviews the application for completeness and compliance, and prepares a recommendation for the Planning Board.
- The **Technical Review Committee (TRC)** conducts technical review and forwards its recommendation along with the Subdivision Administrator's findings to the Planning Board.

The Planning Board receives both recommendations prior to taking action.

When considering a subdivision application, the Planning Board may:

1. **Approve** the application if all applicable standards are met.
2. **Approve with Conditions** where minor deficiencies exist, provided those conditions simply require compliance with existing standards (e.g., correcting technical errors, updating plans to match ordinance requirements). Note:
 - **Conditions may not create new obligations beyond what the ordinance requires.**
 - If conditions are imposed, Planning Staff is authorized to verify compliance once conditions are satisfied without further Board action.
 - Because administrative review is governed by objective standards, conditions may only require correction of identified deficiencies necessary to comply with existing ordinance standards, clarify how standards apply to particular site features based on factual review, or reflect changes voluntarily offered by the applicant that bring the project into compliance.
3. **Deny** the application if it fails to comply with ordinance standards.

The Planning Board also retains the discretion to **refer any subdivision application to the Board of Commissioners** for legislative review if the application raises significant community impacts, unique site characteristics, or broader policy considerations.

Recusal Requirements for Administrative Decisions

Even though administrative decisions involve no discretion, Board members are still subject to conflict of interest rules:

- A Board member must not participate if the outcome is reasonably likely to result in a **direct, substantial, and readily identifiable financial impact** on themselves or a close relative, business partner, or associate.
- If a potential conflict exists, the Board should follow its standard recusal procedures: disclosure, discussion, and a majority vote by the Board to determine if recusal is necessary.

Time Limits for Decisions

The Planning Board must act within **90 days** of first considering a subdivision application. Failure to act within this period may result in constructive approval.

Written notice of the Planning Board's decision and any conditions imposed must be provided to the applicant within 10 business days following the Board's action.

Appeals of Administrative Subdivision Decisions

If an applicant disagrees with a denial or conditional approval by the Planning Board, their appeal is directed to the courts under North Carolina law, following the procedures for judicial review of administrative decisions.

PART 4: ALEXANDER COUNTY LAND DEVELOPMENT CODE ARTICLE X: DECISION-MAKING, ADMINISTRATIVE AND ADVISORY BODIES

§-154-308. Alexander County Planning Board

- A. Powers and Duties Pursuant to This Chapter. Without limiting any authority granted to the Alexander County Planning Board by law or by regulations, the Planning Board shall have the following powers and duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:
 - (1) Studies and Surveys. To perform studies and surveys of the present conditions and probable future development of the County and its environs.
 - (2) Administrative Amendments. To initiate *administrative amendments* to the *Comprehensive Plan* by adopted motion and submittal to the *Planning Director*.
 - (3) Substantive Amendments. To initiate and review *substantive amendments* to the *Comprehensive Plan* and make recommendations to the Board of Commissioners for final action thereon.
 - (4) Text Amendments. To initiate *text amendments* to this Chapter by adopted motion and submittal to the *Planning Director*; and to review any proposed *text amendment* and make recommendations to the Board of Commissioners for final action thereon.
 - (5) Map Amendments. To initiate *map amendments* to the Official Zoning Map by adopted motion; and to review any proposed *map amendment* and make recommendations to the Board of Commissioners for final action thereon.
 - (6) Plan Review. To approve, approve conditionally or deny any plan for a *subdivision* for which it is the reviewing agency and any plan referred to it by another reviewing agency.
 - (7) Special Fill Permits. To review *special fill permit* applications and take action thereon.
 - (8) Additional Powers and Duties. Such additional powers and duties as may be set forth for the Planning Board elsewhere in this Chapter and in other laws and regulations.
- B. Membership. Five (5) members appointed by the Board of Commissioners, and two (2) members appointed by the Taylorsville Town Council. One (1) alternate member may be selected by the Board of Commissioners who shall vote in the absence of another member, a recusal of a member from a particular issue at hand, or a vacancy on the Planning Board exists. The alternate shall have the same rights and responsibilities as a regular member when serving in place of a regular member. Alternates are encouraged to attend all meetings.
- C. Terms. Overlapping terms of three (3) years.
- D. Vacancies. Any vacancy shall be filled for the unexpired term in the same manner as the initial appointment.
- E. Officers. The Planning Board shall elect a Chair, Vice-Chair, and Secretary from its members, who shall serve for one (1) year or until reelected or until their successors are elected.
- F. Rules. The Planning Board shall adopt rules and bylaws in accordance with the provisions of this Chapter, *NCGS §160D-301* and the *Alexander County Planning Board*

Rules of Procedure. The Planning Director or designee shall serve as the body's parliamentarian.

- G. Meetings. Meetings of the Planning Board shall be held at the call of the Chair (or in his/her absence, the Vice-Chair), or the *Planning Director* and at such other times as the Planning Board may determine. The Chair (or in his/her absence, the Vice-Chair) may administer oaths and compel the attendance of witnesses by subpoena. All meetings or hearings of the Planning Board shall be open to the public.
- H. Records. The Planning Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact.

§-154-309. Alexander County Zoning Board of Adjustment

- A. Powers and Duties Pursuant to This Chapter. Without limiting any authority granted to the Zoning Board of Adjustment by law or by regulations, the Zoning Board of Adjustment shall have the following powers and duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:
 - (1) Text Amendments. To initiate *text amendments* to this Chapter by adopted motion and submittal to the *Planning Director*.
 - (2) Map Amendments. To initiate *map amendments* to the Official Zoning Map by adopted motion.
 - (3) Flood Damage Prevention Board. To serve as the Flood Damage Prevention Board.
 - (4) Water Quality Board. To serve as the Water Quality Board.
 - (5) Administrative Review. To hear and decide *appeals* where it is alleged there is error in an order, requirement, decision, *determination* or interpretation made by an Administrator in the enforcement of this Chapter.
 - (6) Communication Facility Permits. To review and approve the granting of a *communication facility permit* by the *Communication Facilities Administrator* for any *category three (3) communication facility*;
 - (7) *Special Use Permits*. To grant *Special Use Permits* as authorized by this Chapter;
 - (8) Temporary Use Permits. To grant *temporary use* permits referred by the *Zoning Administrator* and as authorized by this Chapter.
 - (9) Variances. To hear and decide applications for approval of zoning variances from the terms of this Chapter, in accordance with the procedures and standards set forth in §154-365 (Variances).
 - (10) Vested Rights. To grant vested rights as authorized by this Chapter.
 - (11) Additional Powers and Duties. Such additional powers and duties as may be set forth for the Zoning Board of Adjustment elsewhere in this Article and in other laws and regulations.
- B. Membership. The Planning Board shall serve as the Board of Adjustment. 5 members selected by the board shall serve as the Board of Adjustment, with the remaining 2 members serving as alternates. Members shall be citizens of Alexander County and shall serve without pay. Alternative members may serve on individual matters based on a regular member's temporary disqualification. Vacant seats and disqualified members are

not considered in calculating a 4/5 vote or majority vote if there are no qualified alternates.

- C. Terms. Overlapping terms of three (3) years.
- D. Vacancies. Any vacancy shall be filled for the unexpired term in the same manner as the initial appointment.
- E. Officers. The Zoning Board of Adjustment shall elect a Chair and Vice-Chair from its members, who shall serve for one (1) year or until reelected or until their successors are elected. The Zoning Board of Adjustment shall appoint a secretary, who may be a County officer, an employee of the County or a member of the Zoning Board of Adjustment.
- F. Rules. The Zoning Board of Adjustment shall adopt rules and bylaws in accordance with the provisions of this Chapter, *NCGS §160D-304* and the *Planning Board Rules of Procedure*. The Planning Director or designee shall serve as the body's parliamentarian.
- G. Meetings. Meetings of the Zoning Board of Adjustment shall be held at the call of the Chair (or in his/her absence, the Vice-Chair) and at such other times as the Zoning Board of Adjustment may determine. The Chair (or in his/her absence, the Vice-Chair) may administer oaths and compel the attendance of witnesses by subpoena. All meetings or hearings of the Zoning Board of Adjustment shall be open to the public.
- H. Decisions. The concurring vote of at least four of the five members (or four-fifths (4/5)) of the panel of the Zoning Board of Adjustment (ZBA) hearing the matter shall be necessary to grant a variance. A majority of the panel of ZBA shall be required to decide any other quasi-judicial matter which it is required to pass under this Chapter. On all *appeals*, applications and other matters brought before the ZBA, said Board shall inform those making *appeal* or application of its decisions and the reasons therefore. Such notification shall be in writing.
- I. Records. The Zoning Board of Adjustment shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact. Final disposition of *appeals* shall be by order indicating the reasons of the Zoning Board of Adjustment therefore, all of which shall be a public record.

§-154-310. Alexander County Water Quality Board

- A. Powers and Duties Pursuant to This Chapter. Without limiting any authority granted to the Water Quality Board by law or by regulations, the Water Quality Board shall have the following powers and duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:
 - (1) Text Amendments. To initiate *text amendments* to this Chapter by adopted motion and submittal to the *Planning Director*.
 - (2) Map Amendments. To initiate *map amendments* to the Official Zoning Map by adopted motion.
 - (3) Watershed Map Review. To interpret the official *watershed* maps and pass decisions upon disputed questions of *lot* lines or district boundary lines.
 - (4) Administrative Review. To hear and decide *appeals* from any decision or *determination* made by the *Water Quality Administrator* in the enforcement of any

sections of this Chapter which relate to *water supply watershed* protection and *stormwater* management.

- (5) Water Supply Watershed Use Permits. To grant *water supply watershed use* permits as authorized by this Chapter.
- (6) Watershed Protection Compliance Permits. To grant *watershed* protection compliance permits as authorized by this Chapter.
- (7) Watershed High-Density Development Permits. To grant *watershed* high-density development permits as authorized by this Chapter.
- (8) Variances. To grant, in specific cases, *Watershed Local Variances* from the terms of this Chapter which relate to *water supply watershed* protection.
- (9) Additional Powers and Duties. Such additional powers and duties as may be set forth for the Water Quality Board elsewhere in this Chapter and in other laws and regulations.

B. Membership. The Zoning Board of Adjustment shall serve as the Water Quality Board.

C. Rules. The Water Quality Board shall carry out all powers and duties stated in the rules of procedure adopted by the Board of Commissioners for the Water Quality Board. Any changes (other than to the meeting time and place) to such rules of procedure must be approved by the Board of Commissioners.

D. Meetings. All meetings or hearings of the Water Quality Board shall be open to the public.

E. Decisions. The concurring vote of the majority of the members of the Water Quality Board shall be necessary to reverse any order, requirement or decision of the *Water Quality Administrator*. The same majority vote shall be necessary to decide in favor of the *applicant* on any matter upon which the Water Quality Board is required to pass under any sections of this Chapter which relate to *water supply watershed* protection or to affect any variation of those sections of this Chapter which relate to *water supply watershed* protection. On all *appeals*, applications and other matters brought before the Water Quality Board, said board shall inform in writing all parties involved of its decisions and the reasons therefore.

F. Records. The Water Quality Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact. Final disposition of *appeals* shall be by recorded order indicating the reasons of the Water Quality Board therefore, all of which shall be public record.

§-154-311. Alexander County Flood Damage Prevention Board

A. Powers and Duties Pursuant to This Chapter. Without limiting any authority granted to the Flood Damage Prevention Board by law or by regulations, the Flood Damage Prevention Board shall have the following powers and duties with respect to this Chapter, to be carried out in accordance with the terms of this Chapter:

- (1) Administrative Review. To hear and decide *appeals* from any decision or *determination* made by the *Floodplain Administrator* in the enforcement of any sections of this Chapter which relate to flood damage prevention.

- (2) Text Amendments. To initiate *text amendments* to this Chapter by adopted motion and submittal to the *Planning Director*.
- (3) Map Amendments. To initiate *map amendments* to the Official Zoning Map by adopted motion..
- (4) Variances. To grant, in specific cases, *variances* from the terms of any sections of this Chapter which relate to flood damage prevention.
- (5) Additional Powers and Duties. Such additional powers and duties as may be set forth for the Flood Damage Prevention Board elsewhere in this Chapter and in other laws and regulations.

B. Membership. Zoning Board of Adjustment shall serve as the Flood Damage Prevention Board.

C. Rules. The Flood Damage Prevention Board shall carry out all powers and duties stated in the rules of procedure adopted by the Board of Commissioners for the Flood Damage Prevention Board. Any changes other than to the meeting time and place to such rules of procedure must be approved by the Board of Commissioners.

D. Meetings. All meetings or hearings of the Flood Damage Prevention Board shall be open to the public.

E. Decisions. The concurring vote of the majority of the members of the Flood Damage Prevention Board shall be necessary to reverse any order, requirement or decision of the *Floodplain Administrator*. The same majority vote shall be necessary to decide in favor of the *applicant* on any matter upon which the Flood Damage Prevention Board is required to pass under any sections of this Chapter which relate to flood damage prevention or to affect any variation of any sections of this Chapter which relate to flood damage prevention. On all *appeals*, applications and other matters brought before the Flood Damage Prevention Board, said board shall inform in writing all parties involved of its decisions and the reasons therefore.

F. Records. The Flood Damage Prevention Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating that fact. Final disposition of *appeals* shall be by order indicating the reasons of the Flood Damage Prevention Board therefore, all of which shall be public record.

PART 5: ALEXANDER COUNTY PLANNING BOARD RULES OF PROCEDURE

PREAMBLE

These Rules of Procedure promulgated for the Alexander County Planning Board are intended to provide a method to make Planning Board meetings and the public hearings therein more orderly and efficient. These Rules of Procedure are not intended to add, modify, or delete provisions from the County of Alexander County Land Development Code, Code of Ordinances of the County of Alexander, Alexander County Comprehensive Plan, or other ordinances, codes, regulations, or plans established or created by the County of Alexander. All previous Rules of Procedure shall be superseded by these Rules of Procedure. Where applicable, these rules shall apply when the Planning Board convenes as the Board of Adjustment.

1. Meetings, Generally

1.1 Organizational Meeting

At the time of the regular meeting in January, the Alexander County Planning Board ("Board" or "Planning Board") shall elect a Chairperson, Vice Chairperson and Secretary.

1.2 Regular Meetings

The Planning Board shall hold Regular Meetings on the second Thursday of each month at 6:00 p.m. at the CVCC Alexander Center for Education, 345 Industrial Blvd in Taylorsville, North Carolina, or another such time or place as prescribed by the Planning Board.

1.3 Special and Adjourned Meetings

The Planning Board may hold Adjourned or Special Meetings as may be necessary. An Adjourned Meeting is defined as a meeting in continuation of the session of the immediately preceding regular or special meeting. A Special Meeting is defined as a separate meeting held at a time different from that of any regular meeting and convened only to consider one or more items of business specified in the call of the meeting. The Chairperson or any three (3) members may convene a Special Meeting upon written notice of not less than forty-eight (48) hours to all members, signed by the members who called the meeting, and issued through the County of Alexander County Planning and Development office.

1.4 Agenda

Only those matters included on the agenda may be considered at any Planning Board meeting. No matter affecting the zoning of a property, Special Use Permit, Master Land Use Plan, or Variance may be placed on the agenda for a meeting that has not been presented on an official application together with all required materials and fees, costs, and other expenses paid in full to the Planning Director by 5:00 PM on the

15th day of the month prior to the meeting. Unless prohibited or excluded by ordinance, rule, procedure, or statute, the Planning Board may consider a matter not included on the agenda by a vote of a majority of the Board.

1.5 Quorum

A majority of the Planning Board not excused from voting shall constitute a quorum to do business. A member who has withdrawn from a meeting without being excused by the Board shall be counted as present for the purposes of determining the existence of a quorum.

1.6 Attendance

Members of the Planning Board are expected to have no more than three (3) unexcused absences in one (1) calendar year. Those who do will be subject to dismissal from the Board in order to appoint an active member.

2. Officers

2.1 Office of Chairperson

The Chairperson is elected annually from all Planning Board members at the organizational meeting. The Chairperson presides at all meetings and shall conduct the meeting under the Rules of Procedure for the Alexander County Planning Board. If said Rules do not address the issue facing the Planning Board, the Chairperson shall refer to the North Carolina General Statutes. If that does not resolve the issue in question, the Chairperson shall refer to Robert's Rules of Order. The Chairperson votes on all motions unless excused for conflict of interest and exercises the following powers:

- 2.1.1 To rule motions in or out of order, including any motion patently offered for obstructive or dilatory purposes; and
- 2.1.2 To call speakers who signed up on sign-up sheets to speak during the public hearing; and
- 2.1.3 To determine whether a speaker has gone beyond reasonable standards of courtesy in his remarks and to entertain and rule on objections from other members on this ground; and
- 2.1.4 To entertain and answer questions of parliamentary law or procedure; and
- 2.1.5 To call a brief recess at any time; and
- 2.1.6 To adjourn in an emergency.

2.2 Office of Vice Chairperson

The Vice Chairperson is elected annually from all Planning Board members at the organizational meeting. The Vice Chairperson shall have all duties and powers of the Chairperson in the Chairperson's absence.

2.3 Office of Secretary

The Secretary is elected annually from all Planning Board members at the organizational meeting. The Secretary shall have all duties of the Chairperson in the Chairperson and Vice Chairperson's absence. In the absence of all three (3) officers, the members of the Board shall elect a presiding officer.

3. Actions by the Board

3.1 Recommendations

Unless otherwise provided in these Rules of Procedure, the Planning Board recommends an agenda item if there are affirmative votes equal to a majority of the Board members present and not excused from voting. The Board may hold public hearings before recommending amendments to the zoning ordinance, subdivision ordinance, and may hold it on other matters coming before it. The Board, or Planning Board sitting as the Board of Adjustment, must hold public hearings before granting approval for variances, overturning an administrative decision, final master land use plans, as well as Special Use Permits.

3.2 Debate/Discussion by Board

After a motion and second are made to approve, disapprove, recommend, or not recommend an agenda item, the Chairperson opens the floor for debate. Members of Board are recognized to speak by the Chairperson. A member who has not yet spoken is recognized before someone who has already spoken.

3.3 Procedural Motions

In addition to substantive proposals, the following procedural motions, and no others, shall be in order. Each motion is debatable, may be the subject of a substitute motion, and unless otherwise stated, requires a majority vote for adoption:

3.3.1 To adjourn. This motion may be made only at the conclusion of action on a pending matter, may not interrupt deliberation of a

pending matter nor be in order until completion of items on the agenda.

3.3.2 To take a recess.

3.3.3 To divide a complex motion and consider it by paragraph.

3.3.4 To stop debate on the current question, also referred to as calling the previous question. This motion must receive a two-thirds (2/3) supermajority vote for it to be adopted.

3.3.5 To postpone to a certain time or date.

3.3.6 To refer to a committee for a time certain, not exceeding the date of the next regularly scheduled Planning Board meeting.

3.3.7 To substitute another motion for a motion pending, on the same subject matter.

3.3.8 To reconsider. This motion must be made only at the meeting during which the original vote was taken. It cannot interrupt deliberation on a pending matter. It can only be made by a member who voted with the prevailing side.

3.3.9 To rescind or repeal.

3.3.10 To ratify action previously taken.

3.4 Withdrawal of Motions/Amended Motions

The introducer of a motion or a member seconding it may withdraw a motion any time before a vote provided said motion is withdrawn before the vote.

3.5 Modification of Rules

No Planning Board Rule concerning the conduct of proceedings may be adopted, amended, or repealed without said proposed rule being announced at least one Planning Board meeting before consideration of the same, with notice of the proposed modification to be recorded in the minutes of that meeting.

4. Public Hearings

When conducting public hearings of any kind or otherwise considering matters wherein the public has a right to be heard, the following provisions apply unless otherwise noted in these Rules of Procedure:

- 4.1 If the Planning Board meeting has any public hearings on the agenda, County Staff shall place near the entrance to the room or auditorium in which said Board sits or adjacent to where the Board physically sits, a sign up sheet for each public hearing scheduled on the agenda. A County Staff member shall be responsible for collecting the sign up sheets prior to the commencement of each meeting and providing the list to the Chairperson of the Planning Board.
- 4.2 Prior to any public hearing, the Chairperson of the Board may make note of reasonable standards of courtesy be exercised during the meeting. The Chairperson will also call upon the Planning Director, or the Director's designee, to present the staff report and recommendation prior to the hearing. The Board may ask questions to members of County Staff following this presentation.
- 4.3 Applicant(s) or their assigned representative(s) shall be present at the Alexander County Planning Board meeting at which their application request is scheduled to be heard. Failure of the applicant to meet this requirement shall be cause to remove the application request from the hearing agenda and to return the application to the applicant. Following the staff report and verification that the applicant(s) or their assigned representative(s) is/are present, the Chairperson shall open the public hearing and require those wishing to speak concerning the proposed action to identify themselves prior to speaking on an issue.
- 4.4 The Chairperson of the Planning Board, or his designee, shall call each person in the order reflected in the sign up sheets to speak. If there is additional time remaining after the individuals on the sign up sheet have spoken, the Chairperson shall permit other individuals who are not on the sign up list to speak.
- 4.5 Proponents and opponents of a given matter shall be provided equal time to present their arguments. Those favoring the proposed action shall be allowed fifteen (15) minutes for presentation, followed by fifteen (15) minutes for those opposing the action, with the proponents then to have five (5) minutes for rebuttal and the opponents to then have five (5) minutes for surrebuttal.
- 4.6 If an individual who is given the floor to speak on an issue desires to ask a Staff Member of the County of Alexander County a question regarding a matter presented, that individual shall request the Planning Board to query a County Staff member concerning that issue.
- 4.7 The Chairperson for the Planning Board, or his designee, shall be the official timekeeper for the Planning Board.

- 4.8 The proponents and opponents for all public hearings have the right to divide their allotted time among them as they may choose. At the beginning of the public hearing, the Chairperson may advise individuals wishing to speak that they should consider the needs of other individuals on the sign-up sheet when speaking before the Board.
- 4.9 After the time allotted for arguments has expired, those wishing to speak, but who have not done so, shall have no right to speak before the Board, unless the Planning Board agrees to extend the time limits for each side equally.
- 4.10 The Planning Board may refuse to hear a person desiring to speak based upon grounds that the subject matter is confidential, that its public discussion would be illegal, that it is a matter not within the jurisdiction of the Board, that the matter is not germane to the Planning Board's consideration of the matter under discussion or for any other cause deemed sufficient by the Board.
- 4.11 Any person allowed to speak who shall depart from the subject under discussion, or who shall make personal, impertinent or slanderous remarks, or who shall become boisterous while addressing the Board, shall be declared out of order by the Chairperson, or by majority vote of the Board. A person declared out of order shall be barred from speaking further before the Board unless permission to continue shall be granted by a majority vote of the Board, or under such restrictions as the Board may provide. Unless otherwise provided herein, no person speaking at a public hearing shall be subject to cross-examination.
- 4.12 Citizens must be present to speak at the Board meeting and may yield their time to another individual who is present.
- 4.13 Any individual who speaks before the Planning Board and wishes to introduce any exhibits or documents that are on standard-sized paper shall distribute sixteen (16) copies of the same to a member of County Staff who shall in turn distribute copies to members of the Planning Board. Any individual who wishes to use the County's computer projection equipment may do so by making arrangements at least twenty-four (24) hours in advance of the meeting.
- 4.14 All exhibits introduced by a party must be labeled as it is introduced into the record. All exhibits shall remain with the Planning Board and may not be returned to the presenter.

5. Quasi-judicial Hearings

All public hearings in front of the Planning Board or the Board of Adjustment to consider Planned Development Districts, Special Use Permits, Appeals of Administrative Decisions and Variance requests shall be in the form of a quasi-judicial hearing. The purpose of a quasi-judicial hearing is to make written findings of fact based on the evidence presented at the hearing or hearings in order to decide whether the standards set out in the Land Development Code have been met. Evidence is required to be in the record for each key fact that the Board determines to exist. Only the body of evidence presented at the hearings may be considered in a quasi-judicial procedure. While formal Rules of Evidence do not apply, they will be generally followed by the body conducting the hearing. In addition to the Public Hearing procedures noted above in this section, quasi-judicial hearings shall be conducted as follows:

- 5.1 Preliminary motions by parties concerning procedural aspects of the Public Hearing
- 5.2 All parties wishing to present testimony or evidence are sworn in, or at the discretion of the Chairperson, sworn in immediately before presenting evidence before said body
- 5.3 Staff Report and recommendation presented by County Staff
- 5.4 Presentation by Applicant / Proponents
- 5.5 Cross-examination of Applicant / Proponent's by Planning Board's Counsel
- 5.6 Cross-examination by Applicant's / Proponent's Counsel
- 5.7 Presentation by Opponents
- 5.8 Cross-examination of Opponents by Planning Board's Counsel
- 5.9 Cross-examination of Applicant / Proponents by Opponent's Counsel
- 5.10 Rebuttal by Applicant / Proponents
- 5.11 Rebuttal by Opponents
- 5.12 Questions by the Board (may occur at any time in proceedings)
- 5.13 Close Quasi-judicial Hearing
- 5.14 Discussion, fact finding, and voting among Board Members
- 5.15 Whenever a member of the Planning Board votes during quasi-judicial proceedings, that member must briefly explain the facts that he or she has found and the reason for said vote or concur with another member's finding

of facts and reason for vote, or concur with the facts recited in the Staff Report.

6. Specific Conduct of Proceedings

In addition to the rules listed in Paragraphs 4 and 5 of the Alexander County Planning Board Rules of Procedure, the following agenda items shall comply with the additional rules listed herein:

6.1 Rezoning Requests

6.1.1 The Planning Board hears requests and proposals for zoning changes. Following the discussion and optional public hearing by the Planning Board, the Chairperson shall call for a motion for or against the rezoning request or proposal. The maker of the motion shall specify the reasons for their motion. Board members may vote to recommend to the Alexander County Board of Commissioners to approve, to approve with modifications, or to deny the zoning petition.

6.1.2 In the case of a Planned Development rezoning, the Planning Board shall hear comments on both the request to rezone and the Planned Development District Plan in a single public hearing unless the Planning Board decides to separate the two hearings by majority vote. Following the hearing, the Planning Board shall call for a motion on the request to rezone to the particular planned development category and then shall vote on approval of the Planned Development District Plan.

6.2 Special Use Permits

The Planning Board hears requests for Special Use Permits. Following the public hearing and discussion by the Planning Board, the Chairperson shall call for a motion for or against the request. The maker of the motion shall specify the reasons for their motion. The decision of the Planning Board shall be accompanied by written findings of fact specifying the reasons for the decision and each member of the Planning Board shall state the factual basis for his or her decision. The findings shall be based upon substantial evidence contained in its proceedings. Planning Board members may vote to approve, approve with conditions, or deny the permit. Special Use Permits shall be decided by majority vote.

6.3 Variances

Variances are intended to address practical difficulties or unnecessary hardships resulting from strict application of zoning standards. The Variance procedures of this section shall not be used to permit a use in a zoning district that is not otherwise allowed in that district, nor shall the procedures of this section be used to vary or waive the subdivision standards of this Land Development Code. The Planning Board shall sit as the Board of Adjustment to take action to approve,

approve with modifications or deny the proposed zoning variance. All applicable rules applying to the Planning Board in these Rules of Procedure shall also apply to the Board of Adjustment. An affirmative vote of a least four-fifths (4/5) of the total membership of the Board of Adjustment eligible to vote shall be required to approve any zoning variance. Following the public hearing and discussion by the Board, the Chairperson shall call for a motion. The maker of the motion shall specify the reasons for their motion. All decisions on zoning variances shall be supported by an affirmative finding of fact on each of the approval criteria as set out in section 2.11.5 of the Alexander County Land Development Code. Each such finding shall be supported by substantial evidence in the record of proceedings.

6.4 Appeals of Administrative Decisions

The Planning Board shall sit as the Board of Adjustment and shall hear and decide appeals where it is alleged that there is an error in any order, requirement, decision or determination made by an administrative official or enforcement of the provisions of the Land Development Code. All applicable rules applying to the Planning Board in these Rules of Procedure shall also apply to the Board of Adjustment. An affirmative vote of a least four-fifths (4/5) of the members of the Board of Adjustment shall be required to reverse any order of an administrative official. Following the public hearing and discussion by the Board, the Chairperson shall call for a motion. The maker of the motion shall specify the reasons for their motion. All decisions on appeals of administrative decisions shall be supported by an affirmative finding of fact based on substantial, factual evidence that the administrative official erred. Such findings shall be supported by substantial evidence in the record of proceedings. An affirmative vote of a least four-fifths (4/5) of the total membership of the Board of Adjustment eligible to vote shall be required to approve appeal from an administrative decision.

6.5 Public Address to Board

Anyone may request to be placed on a Planning Board agenda to address said body by calling the County of Alexander County Planning and Development office by noon at least ten (10) days before the Board meeting and stating the topic and general content of their remarks. Speakers will be limited to three (3) minutes and may not yield time to other people. All persons wishing to address the Planning Board pursuant to this section must speak to a relevant topic within the purview of the Planning Board. The Planning Board may vote by majority to extend additional time to a speaker or modify the agenda to accommodate a speaker. The Chairperson of the Planning Board, or his designee, shall be the timekeeper.

7. Duty to vote

7.1 Conflict of Interest

No member shall be excused from voting unless that member has a conflict of interest, as defined in this Section. Board members may be recused from voting on a motion if excused by the other Board members for conflict of interest.

- 7.1.1 Any Board member who has an interest in the action before the Board must disclose the conflict publicly on the record. A Board member may be recused from voting after a motion is made, seconded and approved by a majority of Board members present. The recused Board member should leave the Board chambers during any discussion on the motion and refrain from making any comments on the motion.
- 7.1.2 An "interest" is defined as a direct or indirect pecuniary or material benefit accruing to a Board member as a result of a contract or transaction that is or may be the subject of an action which the Planning Board will undertake. A Board member is deemed to have an interest in the affairs of (1) any person in his immediate household, (2) a business where the Board member is an officer or director of the board, (3) a business where a Board member owns 5% or more of the legal or beneficial ownership, (4) any non-profit organization that Board member serves as an officer, director or other member.
- 7.1.3 Board members are encouraged to request from the County of Alexander Legal Department advisory opinions concerning potential conflicts of interest. Board members may request formal written opinions or informal written or oral opinions.
- 7.1.4 Nothing in this Section prohibits a Planning Board member who has a conflict of interest from, after being recused, participating in the public hearing. The Planning Board member shall have the same rights and privileges as every other individual wishing to participate in a public hearing.
- 7.1.5 Nothing in this Section prohibits a Planning Board member from making a disclosure that said member has a connection of some type in the public hearing or agenda item at issue which does not rise to a conflict of interest as defined in this Section.

7.2 Refusals to Vote/Abstentions

A failure to vote by a member who is present or who, having been present, has left the meeting without being excused, shall be deemed an affirmative vote and shall be so recorded.

7.3 Reasons for Votes to be Given

The maker of a motion shall summarize their reasons for the motion.

7.4 Duty to Vote

There is an affirmative duty of all members of the Planning Board to vote either in favor of or against all agenda items requiring a vote.

8. Minutes

8.1 Official Record

A record of the proceedings of every meeting shall be preserved by the Planning Director in any permanent medium, and every resolution, bylaw, or action passed by the Board, and every motion made at any meeting, must be recorded and made permanent. The records of the proceedings of each meeting must be signed by the Chairperson. The Planning Director for the County of Alexander shall be responsible for keeping the minutes required by law. All minutes shall be signed by the recorder of the minutes and the Chairperson of the Planning Board, or their designee.

8.2 Disposal of Tapes

Board meetings are electronically recorded, and the recordings shall be preserved when the minutes are approved by the Board. Once adopted, the written minutes become the official minutes and the official public record of said Board meeting. Until that event, minutes shall not be distributed until the next Board agenda is published.

PART 6: OATHS

Oath of office

- I, ____ do solemnly swear (or affirm) that I will support and maintain the Constitution and the laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge duties of my office, [so help me God.]
 - Administered by chair, board clerk, or any notary public
 - Signed and filed with the city or county clerk

Witness oath

- "Do you solemnly swear or affirm that the evidence you shall give to the board in this action shall be the truth, the whole truth, and nothing but the truth so help you God?"
 - Administered by chair, board clerk, or any notary public